OKLAHOMA.

Ray E. Sutton, Boynton.
Evan E. Lambdin, Braman.
Ernest H. Rownsaville, Coleman.
Jesse W. Pinkston, Drumright.
James W. Evans, Mounds.
Herbert Harris, Oilton.
Minnie A. Wood, Shamrock.
Charles E. Campbell, Texhoma.
William A. Vassar, Tryon.
Jack W. Rowland, Webbers Falls.

OREGON.

Guy E. Tex, Central Point.
Ethel N. Everson, Creswell.
Albert M. Porter, Gaston.
William C. DePew, Lebanon.
Carl A. Peterson, Orenco.
John S. Sticha, Scio.
William E. Tate, Wasco.

WEST VIRGINIA.

George H. Mellen, Beckley.
Luther P. Graham, Hinton.
Carl F. Stewart, Littleton.
Kellous P. Nowlan, Logan.
Alonzo E. Linch, Moundsville.

WISCONSIN.

Mamie R. Een, Amherst.
Raymond E. G. Schmidt, De Forest.
John A. Gudmundsen, Detroit Harbor.
Samuel M. Hogenson, Ephraim.
Edwin E. Weinmann, Iola.
Paul A. Brown, Mellen.
George Oakes, New Richmond.
Frank S. Brazeau, Port Edwards.
Howard M. Buck, Prairie Farm.
Fred X. Knobel, River Falls.
John E. Himley, Wabeno.

HOUSE OF REPRESENTATIVES.

SATURDAY, *January 21, 1922.*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Almighty God, our Heavenly Father, we come again to the solemn yet tender mystery of Thy throne. We believe that there is one God over all, and blessed forevermore. Thy judgments are full of wonder, yet merciful. Gently correct us by that loving pity that redeems us from distress and grants us sweet release. Be unto us an abiding reality and make Thy presence like unto the nearness of a dear friend. Give us larger conceptions of the truth and a richer and a profounder knowledge of all things needful. Then O help us to bring the vision to the task, the revelation to the duty, and, above all things else, the truth to everything. Through Jesus Christ our Lord. Amen.

The Journal of the proceedings of yesterday was read and approved.

LEGISLATION FOR EX-SERVICE MEN.

Mr. SWEET. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD, giving a brief history of the legislation that has been passed for the benefit of ex-service men.

The SPEAKER pro tempore. The gentleman from Iowa asks unanimous consent to extend his remarks in the RECORD on the subject indicated. Is there objection?

There was no objection.

INDEPENDENT OFFICES APPROPRIATION BILL.

Mr. WOOD of Indiana. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 9981, the independent offices appropriation bill.

The SPEAKER. The gentleman from Indiana moves that the House resolve itself into Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 9981.

Mr. BLANTON. Mr. Speaker, I ask for a division.

The House divided; and there were 59 ayes and 13 noes.

Mr. BLANTON. Mr. Speaker, I object to the vote, and make the point of no quorum.

The SPEAKER. The gentleman from Texas makes the point of no quorum. The Doorkeeper will close the doors, the Sergeant at Arms will notify the absentees, and the Clerk will call the roll.

The question was taken; and there were—yeas 324, nays none, not voting 106, as follows:

YEAS—324.

Ackerman	Dupré	Kissel	Roach
Almon	Dyer	Kleczka	Robertson
Andrew, Mass.	Echols	Kline, Pa.	Robsion
Andrews, Nebr.	Elliott	Knutson	Rodenberg
Ansorge	Ellis	Kopp	Rogers
Appleby	Evans	Lampert	Rose
Arentz	Fairchild	Lanham	Rosenbloom
Aswell	Fairfield	Lankford	Rouse
Atkeson	Faust	Larsen, Ga.	Sanders, Tex.
Bankhead	Favrot	Larson, Minn.	Sandlin
Barbour	Fenn	Layton	Schall
Barkley	Fess	Lazaro	Scott, Mich.
Beck	Fields	Lea, Calif.	Scott, Tenn.
Beedy	Fish	Leatherwood	Sears
Begg	Fisher	Lee, Ga.	Shelton
Bell	Fitzgerald	Lehlbach	Shreve
Bixler	Focht	Little	Sinclair
Black	Fordney	Logan	Sinnott
Bland, Ind.	Foster	London	Smith, Idaho
Bland, Va.	Frear	Lowrey	Smith, Mich.
Blanton	Free	Luce	Smithwick
Boies	Freeman	Luhring	Snell
Bond	French	Lyon	Snyder
Bowling	Frothingham	McArthur	Speaks
Box	Fuller	McClintic	Sproul
Brand	Funk	McCormick	Stafford
Brennan	Gahn	McDuffie	Steagall
Briggs	Gallivan	McFadden	Stedman
Brown, Tenn.	Garner	McKenzie	Steenerson
Browne, Wis.	Garrett, Tenn.	McLaughlin, Mich.	Stephens
Bulwinkle	Garrett, Tex.	McLaughlin, Nebr.	Stevenson
Burroughs	Gensman	McLaughlin, Pa.	Stoll
Burtness	Gernerd	McSwain	Strong, Kans.
Burton	Gilbert	MacGregor	Strong, Pa.
Butler	Glynn	Madden	Swank
Byrnes, S. C.	Goodykoontz	Magee	Sweet
Byrns, Tenn.	Gorman	Mann	Swing
Cable	Graham, Ill.	Mapes	Tague
Campbell, Kans.	Green, Iowa	Martin	Taylor, Ark.
Campbell, Pa.	Greene, Mass.	Mead	Taylor, N. J.
Cannon	Greene, Vt.	Michener	Taylor, Tenn.
Carew	Griffin	Miller	Temple
Carter	Hadley	Millspaugh	Ten Eyck
Chalmers	Hardy, Colo.	Mondell	Thompson
Chandler, N. Y.	Hardy, Tex.	Montoya	Tillman
Chindblom	Harrison	Moore, Ill.	Tilson
Clague	Haugen	Moore, Ohio	Timberlake
Clarke, N. Y.	Hawley	Moores, Ind.	Tincher
Clouse	Hayden	Morgan	Tinkham
Cockran	Herrick	Mott	Towner
Codd	Hersey	Murphy	Treadway
Cole, Iowa	Hickey	Nelson, A. P.	Underhill
Cole, Ohio	Hill	Nelson, J. M.	Upshaw
Collier	Himes	Newton, Mo.	Vaile
Collins	Hoch	Norton	Vestal
Colton	Huddleston	O'Brien	Vinson
Connally, Tex.	Hudspeth	O'Connor	Volgt
Connell	Hukriede	Oldfield	Volstead
Cooper, Ohio	Hull	Oliver	Walsh
Cooper, Wis.	Humphreys	Overstreet	Walters
Copley	Husted	Padgett	Ward, N. C.
Coughlin	Ireland	Paige	Wason
Crago	Jacoway	Park, Ga.	Watson
Cramton	Jeffers, Ala.	Parker, N. J.	Weaver
Crisp	Johnson, Ky.	Parker, N. Y.	Wheeler
Cullen	Johnson, Miss.	Parks, Ark.	White, Kans.
Curry	Johnson, S. Dak.	Parrish	White, Me.
Dale	Jones, Pa.	Patterson, Mo.	Williams
Dallinger	Jones, Tex.	Porter	Williamson
Darrow	Kearns	Purnell	Wilson
Davis, Minn.	Keller	Quin	Wingo
Davis, Tenn.	Kelley, Mich.	Rainey, Ill.	Winslow
Dempsey	Kelly, Pa.	Raker	Wood, Ind.
Denison	Kennedy	Ramseyer	Woodruff
Dickinson	Ketcham	Rankin	Woods, Va.
Dominick	Kiess	Rayburn	Woodyard
Doughton	Kincheloe	Reber	Wright
Dowell	Kindred	Reece	Wyant
Drewry	King	Reed, W. Va.	Yates
Driver	Kinkaid	Rhodes	Young
Dunbar	Kirkpatrick	Ricketts	Zihlman

NOT VOTING—106.

Anderson	Crowther	Johnson, Wash.	Mills
Anthony	Deal	Kahn	Montague
Bacharach	Drane	Kendall	Moore, Va.
Benham	Dunn	Kitchin	Morin
Bird	Edmonds	Kline, N. Y.	Mudd
Blakeney	Fulmer	Knight	Newton, Minn.
Bowers	Goldsborough	Kraus	Nolan
Brinson	Gould	Kreider	Ogden
Britten	Graham, Pa.	Kunz	Olpp
Brooks, Ill.	Griest	Langley	Osborne
Brooks, Pa.	Hammer	Lawrence	Patterson, N. J.
Buchanan	Hawes	Lee, N. Y.	Perkins
Burdick	Hays	Lineberger	Perlman
Burke	Hicks	Linthicum	Petersen
Cantrill	Hogan	Longworth	Pou
Chandler, Okla.	Hooker	McPherson	Pringey
Christopherson	Houghton	Maloney	Radcliffe
Clark, Fla.	Hutchinson	Mansfield	Rainey, Ala.
Classon	James	Merritt	Ransley
Connolly, Pa.	Jefferis, Nebr.	Michaelson	Reavis

Reed, N. Y.	Sanders, Ind.	Sullivan	Volk
Riddick	Sanders, N. Y.	Summers, Wash.	Ward, N. Y.
Riordan	Shaw	Sumners, Tex.	Webster
Rossdale	Siegel	Taylor, Colo.	Wise
Rucker	Sisson	Thomas	Wurzbach
Ryan	Slemp	Tyson	
Sabath	Stiness	Vare	

So the motion was agreed to.

The Clerk announced the following pairs:

Until further notice:

Mr. LINEBERGER with Mr. KITCHIN.
Mr. LANGLEY with Mr. CLARK of Florida.
Mr. MORIN with Mr. RIORDAN.
Mr. OGDEN with Mr. LINTHICUM.
Mr. HOGAN with Mr. BRINSON.
Mr. BURKE with Mr. GOLDSBOROUGH.
Mr. KLINE of New York with Mr. WISE.
Mr. MCPHERSON with Mr. MANSFIELD.
Mr. OLPP with Mr. POU.
Mr. VARE with Mr. RUCKER.
Mr. ROSSDALE with Mr. DEAL.
Mr. LAWRENCE with Mr. HOOKER.
Mr. DUNN with Mr. SULLIVAN.
Mr. EDMONDS with Mr. TYSON.
Mr. HAYS with Mr. BUCHANAN.
Mr. GRIEST with Mr. FULMER.
Mr. KAHN with Mr. KUNZ.
Mr. REED of New York with Mr. SUMNERS of Texas.
Mr. VOLK with Mr. CANTRILL.
Mr. HUTCHINSON with Mr. MOORE of Virginia.
Mr. OSBORNE with Mr. SABATH.
Mr. MICHAELSON with Mr. THOMAS.
Mr. CHANDLER of Oklahoma with Mr. SISSON.
Mr. CONNOLLY of Pennsylvania with Mr. HAWES.
Mr. PATTERSON of New Jersey with Mr. DRANE.
Mr. GRAHAM of Pennsylvania with Mr. HAMMER.
Mr. BACHARACH with Mr. MONTAGUE.
Mr. ANDERSON with Mr. RAINEY of Alabama.
Mr. PERLMAN with Mr. TAYLOR of Colorado.

The result of the vote was announced as above recorded.

A quorum being present, the doors were opened.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 9981, with Mr. TOWNER in the chair.

The Clerk reported the title of the bill.

The CHAIRMAN. The time on the majority side has expired. All time has expired except 33 minutes, in the control of the minority.

Mr. HARRISON. Mr. Chairman, I yield 15 minutes to the gentleman from Georgia [Mr. WRIGHT].

Mr. WRIGHT. Mr. Chairman and gentlemen of the committee, the safety and perpetuity of the Government of this Republic and of each State of the Union depend upon the maintenance and enforcement of the laws and the protection of the citizen in the enjoyment of his constitutional and inalienable and inherent right of life, liberty, and property, and without the protection of these rights confusion and anarchy would inevitably result.

I do not palliate or condone the violation of law, and condemn lynching and mob law in any form. One of its dangers is, there is no limit to its jurisdiction. But I am equally opposed to a violation of the Constitution under the guise of the enactment of a law which if enacted and enforced would be clearly subversive of the plain terms of the Constitution and destructive of our system of government and the institutions and principles upon which it was founded.

The Dyer antilynching bill is not only pernicious and unjust but is clearly violative of the plain terms and provisions of the Constitution and contrary to the genius and spirit of our institutions and time-honored traditions.

It not only encroaches upon but obliterates the rights of the sovereign States and seeks to substitute Federal for State laws, and transfers from the State to the Federal courts a class of offenders for the trial and punishment of whom ample provision has already been made by laws of the several States.

Have the States become impotent and helpless and can no longer enforce police regulations and criminal laws on their statute books? Such an accusation would be a fearful arraignment of a sovereign Commonwealth.

Aside from the unconstitutionality of the bill its terms and provisions are absurd, ridiculous, and nothing short of a monstrosity. A "mob or riotous assemblage" is defined by the bill to mean "an assemblage composed of five or more persons acting in concert for the purpose of depriving any person of his life without authority of law as a punishment for or to prevent the commission of some actual or supposed public offense," and by the terms of the bill officers of the law who fail to protect the life of a person against such a "mob or riotous assemblage" are guilty of a crime as well as persons participating in such "mob or riotous assemblage."

If the bill has any worthy object, it would seem to be to maintain law and order, suppress crime, and protect human life, and yet any number of persons less than five may unlawfully act in perfect accord and concert and with a common and felonious design to deprive a person of his life and actually take his life in the most unlawful and brutal manner and not be amenable to the proposed law, and any officer who fails to protect the life of a person against the unlawful and felonious conduct of any number of persons less than five is likewise not subject to its provisions.

Besides, it is not made penal for such "mob or riotous assemblage" to deprive a person of his life except "as a punishment for or to prevent the commission of some actual or supposed public offense," so that the mob could with impunity take the life of a person for any cause or reason except "as a punishment for or to prevent the commission of some actual or supposed public offense." The so-called race riots would not be covered by the provisions of the bill.

The proponents of this measure seek to justify its constitutionality and passage by attempting to bring it within the terms and provisions of that part of the fourteenth amendment to the Constitution which provides that no State shall deny any person the equal protection of the laws of the State.

This position is far-fetched and untenable, and this constitutional provision has no application to the subject matter of the bill. The fact is the framers of this provision of the fourteenth amendment never dreamed that the most imaginative mind could ever conceive of stretching it to cover anything akin to the subject matter of the pending bill.

The amendment was adopted soon after the Civil War, and this provision was framed for the sole purpose of preventing any State from enacting a law which would discriminate against the slaves who had been emancipated and for no other purpose.

In seeking to bring the bill within this provision of the Constitution, it is provided—

> That if any State or governmental subdivision thereof fails, neglects, or refuses to provide and maintain protection to the life of any person within its jurisdiction against a mob or riotous assemblage, such State shall by reason of such failure, neglect, or refusal be deemed to have denied to such person the equal protection of the laws of the State, and to the end that such protection as is guaranteed to the citizens of the United States by its Constitution may be secured, it is provided—

And so forth.

Therefore, under the terms of the bill before any person would be amenable to its terms and before a United States court could take jurisdiction of a person thereunder it must be determined in some way, not pointed out or provided in the bill, that the State in which a person had been deprived of his life had failed, neglected, or refused to provide and maintain protection to the life of such person; and this failure, neglect, or refusal on the part of the State must be established as a condition precedent to a Federal court acquiring and taking jurisdiction in the premises. What person, officer, or tribunal is to determine this vital question?

Could it by the most strained legal construction be held that because a "mob or riotous assemblage" had in a given State deprived a person of his life that such State had denied to such person the equal protection of the laws of the State?

The act of five or more persons acting in violation of the laws of the State would not be the act of the State, and how could the State by the unlawful act of such persons be deemed to have denied to any person the equal protection of the law? The act of the individuals composing the mob could not be held to be the act of the sovereign State. Moreover it can not be successfully contended that the act of any State or municipal officer in failing, neglecting, or refusing to make all reasonable efforts to prevent a person being put to death at the hands of a mob or in failing, neglecting, or refusing to make all reasonable efforts in apprehending or prosecuting persons participating in the mob can be attributed to or held to be the act of the State or a denial by the State of the equal protection of its laws to any person. Such officers are chosen to carry out and enforce the laws of the State or municipality and in failing, neglecting, or refusing to do so they act in violation of their sworn duty and become themselves culprits and thus do not represent the State or municipality. In other words, such officers are chosen to perform perfectly proper and legal acts and are presumed to do their duty, and if they do the exact opposite they are not representing the State or municipality. If there is one question well settled in American jurisprudence, it is that a municipality, county, or State is not bound by the

unauthorized, tortious, or illegal acts of their officers, the familiar doctrine being that no principal is bound by the acts of his agent when such agent acts without the scope of his authority. For a State to deprive a person of the equal protection of its laws there must be some affirmative act on the part of its legislative, executive, or judicial departments which in reality so deprives a person.

Some of the most abominable and iniquitious features of the bill are contained in sections 5 and 6, which provide that any county in which a person is put to death by a mob or riotious assemblage shall forfeit $10,000, payable in the first instance to the family of the person lynched, and in the event that any person so put to death shall have been transported by such mob or riotious assemblage from one county to another during the time intervening between his capture and putting to death each county in, or through which he was transported, shall be jointly and severally liable to pay such forfeiture.

These provisions would penalize the innocent, law-abiding taxpayers of a county who had no part in and who stoutly condemn the act of the mob and who had no knowledge of or opportunity to prevent the act of the mob. These provisions would add unjust burdens on taxpayers, including helpless and innocent women and children, and can not be justified in law, good conscious, or common honesty. Indeed, the very female who had been ravished by a brute might be called upon to bear her proportion of the taxes required to pay the family or dependents of the human brute the $10,000 penalty.

This penalty provision of the bill and its modes of enforcement are clearly unconstitutional. A State, being sovereign, is not subject to suit, except one State may, under the Constitution, institute a suit against another State. A county is but a political subdivision of a State, created and organized under the authority of the State for governmental convenience, and, being a part of the sovereignty, is not subject to suit, except where the sovereign voluntarily consents by appropriate legislative enactment.

Mr. Chairman, the general debate upon this bill for the most part has been characterized by dignity, and it has displayed a high order of research and scholarship. It is unfortunate, indeed, that some gentlemen during the general debate upon the floor of this House have seen fit to single out Georgia, the empire State of the South, and make her a target in the discussion. These attacks are, or should be, unworthy of the gentlemen who made them. Georgia does not claim to be superior to all of the other States, but she does claim to be as good as the best. The high stand which she has taken in the proud galaxy of States and in the sisterhood of States has placed her where she needs no defense at my hands. She has made a rich contribution to the art, literature, professions, statesmanship, and patriotism of this Nation. I wish I had time to enumerate to you some of Georgia's achievements. For instance, do gentlemen know that the first sewing machine which was ever made was invented and manufactured in the State of Georgia? Do gentlemen realize that the first steamboat which ever plied across the Atlantic sailed from the port of Savannah, Ga.? Do gentlemen realize that it is very well conceded that the first machine for the manufacture of ice was manufactured in the congressional district of Georgia which I have the honor to represent? Do gentlemen realize that Georgia can justly boast of the first chartered female college in the whole world which granted to women a diploma? The cotton gin was invented in Georgia. Do gentlemen realize that the people of this world are to-day indebted to a Georgian for the discovery and use of anesthesia, a thing that has brought so much relief to suffering humanity?

Mr. TILLMAN. Mr. Chairman, will the gentleman yield to me for a brief question and statement?

Mr. WRIGHT. Yes.

Mr. TILLMAN. Touching upon this question as to how Georgia treats her Negro citizens, is it not stated in effect in the majority report accompanying the bill that the laws of Georgia and the people of Georgia are so fair in the treatment of her colored citizens that in that State Negroes pay taxes on 1,664,368 acres and own property assessed at $47,723,499?

Mr. WRIGHT. That is absolutely true. If I had time I could show you in detail that the colored people of Georgia are properly treated by the white people. Of course, now and then there will be a sporadic violation of law. The percentage of crime in Georgia is no more than in the other States of the Union. If I were disposed to draw an invidious comparison, which I refrain from doing, I might say that Georgia and the enforcement of her laws, compared to some of the States from which some of these gentlemen who make these attacks come, is a literal paragon. Georgia needs no defense at my hands, and I say in conclusion that she is inhabited by as grand a people as have ever resisted the advance of tyranny or nourished the spirit of freedom. The achievements of her chivalric, noble, and patriotic men and women will live in story and in song when her cowardly slanderers and maligners are forever forgotten. [Applause.]

Mr. HARRISON. Mr. Chairman, I yield now to the gentleman from South Carolina [Mr. McSWAIN].

Mr. McSWAIN. Mr. Chairman, I venture to renew the discussion respecting the constitutionality of the antilynching bill. I observe that the distinguished and learned gentleman from Ohio [Mr. BURTON] places the constitutionality of the proposed legislation third and last in the order of discussion, and presumptively of least importance. But it seems to me that the constitutionality is the very first question to meet a Member of Congress on any proposed legislation. Members will remember that the only oath of office they took was an oath to protect and defend the Constitution of the United States, and they did solemnly swear that such obligation was without mental reservation or purpose of evasion. Therefore, a Member can not reason to himself privately that questions of expediency and policy and popular demand for legislation can override the primary and fundamental question of its constitutionality. I was glad when I heard the scholarly and thoughtful gentleman from Ohio [Mr. BURTON] tell us that he deplores the tendency to centralize powers of Government in the hands of Federal officials to the loss of initiative, dignity, pride, and independence of the States. But imagine my surprise and disappointment to hear him say in the next breath that any effort to restrain Federal jurisdiction is merely fighting against time. He tells us that despite our oaths the boundary line between the States and the National Government is beyond our control. If that be true, then, indeed, should our oath of office be amended. Certainly the States are not breaking over and invading the jurisdiction of the National Government. It is equally certain that the tendency of the proposed antilynching bill and the argument of the distinguished gentleman from Ohio is to greatly increase and encourage the unconstitutional invasion by the Federal Government upon the reserved rights of the States.

AMENDMENT IS THE CONSTITUTIONAL METHOD OF ENLARGING FEDERAL POWER.

It seems to me that our duty is, when the progress of science, invention, commerce, and social development necessitates a change in the relations between the State and the Nation, to introduce and to fight for constitutional amendments. And in this connection I wish to say with reference to all the "good-natured chaffing about the part that southern Members had in the passage of the eighteenth amendment and the Volstead Act," that the Southern States which supported the adoption of the eighteenth amendment went about it in an open, manly, and constitutional way. Practically all of them had adopted State legislation prohibiting the manufacture and sale of alcoholic beverages within their respective borders. But owing to the very liberal construction placed by the Supreme Court upon the interstate-commerce powers of the Federal Government the States were rendered almost helpless to enforce prohibition. Whisky by the carload was brought in under the guise of "original packages," and the questions of "what was an original package" and of when the same "arrived," and of what was the "destination" of an original package of liquor, were fought out in the courts of nearly every State in the Nation for many years. We recognize that when the people of the Nation lawfully adopt an amendment to the Federal Constitution all matters properly included within the amendment cease to impinge upon State rights. All the arguments made as to the wisdom and expediency and necessity for the Federal Government to take over the right to punish lynching would be good arguments in favor of a constitutional amendment to that effect, but the same can have no weight whatever in deciding the question of constitutionality as it now exists.

FEDERAL COURTS PROTECT FEDERAL RIGHTS ONLY AND STATE COURTS PROTECT ALL OTHER RIGHTS.

I respectfully submit that confusion amongst the cases that have been cited in this argument will disappear if these fundamental propositions are kept in mind. First, it is the duty of the Federal Government to enact such legislation as the discretion of Congress may determine will be suitable and proper to enforce all the powers expressly conferred upon the National Government, and to enact punitory legislation making criminal the act of any person or persons who invade the rights of any citizen predicated upon and derived from any part of the Federal Constitution. Second, in like manner it is the duty of the State governments to exercise their discretion in enacting legislation to enforce the rights of the citizens based upon and derived from the reserved powers vested in the States and to make invasion of these rights criminal and punishable as such.

Third, within their separate and respective spheres these two governments operating over the same territory and upon the individual citizen are separate and distinct, and neither can impose any obligation or burden upon the agencies or officers of the other, because, however light the burden and obligation may be, if the right to impose the same be granted, then the burden may be made so oppressive as to destroy the agency upon which it is imposed. Fourth, that neither Government, State or Federal, is or can be made responsible for the lawless acts of individual citizens who happen for the time being to be exercising some sort of official power. In order that the State may be said to act through an official, whether legislative, executive, or judicial, that State officer must act in pursuance of his office, must act by virtue of official position, and must be clothed with some power and authority which he seeks to exercise. It is not every act of a man who holds a State office that is official. The sheriff of a county in sudden heat and passion resents a personal insult and kills a man. The State has not committed the homicide, though the sheriff did the killing, and the sheriffs of many States have been tried for murder. Of course, it is the duty of a sheriff to protect his prisoner, but it is also his duty to protect all lawful citizens who are not under arrest. If the sheriff conspires with a mob to surrender his prisoner to be murdered by the mob, called "lynching," the sheriff is just as guilty of murder as any member of the mob, and the moral guilt would be greater than if he had waylaid a personal enemy and had killed him with the pistol furnished by the State to exercise the duties of the sheriff's office.

PERSONAL CRIME AND OFFICIAL ACTS DISTINGUISHED.

Citizens within the States in the peace of God and of the country have as much right to live and to have their lives protected by the officials of the State government as have persons arrested for crime and in the custody of the sheriff. Yet if one citizen murders another we are told that the Federal Government can not exercise jurisdiction unless five citizens join in committing the murder. So we are told that if the sheriff resents an injury or avenges an old grudge by killing a man, it is not State action; but in the same breath we are told that if five or more persons take a prisoner from a sheriff then that becomes a Federal crime. Merely because the sheriff has breached his duty to the State and violated the State law by failing to defend his prisoner at the risk of his own life, his one personal offense does not constitute "State action."

LOGICAL CONSEQUENCES.

I respectfully submit that the proponents of this antilynching bill have not carried their argument to its logical consequences. If, under the fourteenth amendment, the crime of the sheriff in virtually participating in the murder of a prisoner is punishable in a Federal court, and under Federal Statutes, because the sheriff has violated some Federal right of the prisoner, then the crime of murder by one private citizen would also be made a Federal crime. If the right to "life, liberty, and property" is a Federal right, then that Federal right may be protected by Federal statute and the invasion of the Federal right punished in a Federal court. As crime breeds crime, and as failure to properly punish one crime may encourage the commission of another crime, so it could be logically contended that the lawlessness within the States which permits lynching and permits the crimes that provoke lynching indicates the general failure of a State to exercise its primary duty to protect the lives, liberties, and properties of all the citizens, and that this State-wide failure and inaction on the part of the State by making possible an orgy of crime demonstrates that the State has abdicated its independence and right of autonomy, and that the Federal Government can step in and enact legislation predicated upon the assumption that the States are not doing their duty in protecting the life, liberty, and property of the people, and that under the fourteenth amendment the "life, liberty, and property" of the people is a Federal right, and that Congress can legislate to protect all Federal rights and, therefore, Congress can make punishable in a Federal court not only the killing of one citizen by another but the stealing of property and the failure to support wives and children and the vast multitude of crimes.

"EQUAL PROTECTION OF LAWS" MEANS "EQUAL RIGHTS IN COURT."

As I gather it from hearing and reading carefully the arguments of the distinguished gentleman from Kansas [Mr. LITTLE] this antilynching bill is necessarily predicated upon the assumption that the States have in some cases failed to exert sufficient physical force to protect the life of each individual prisoner. I gather from his argument that so long as "the sheriff does his duty" there is no Federal right in question, but the instant that the sheriff "fails to do his duty" the Federal right immediately arises. Though this gentleman is a learned lawyer and has placed the country, and especially the legal profession, under profound obligations to him for his magnificent work in compiling and arranging the general statutory laws of the United States, yet he is preeminently an advocate, and his speech is that of an advocate rather than the opinion of a judge. Now, I propose to him this question, and before this legislation can become effective these questions must be answered in the words of the legislation: When does the sheriff fail to do his duty? And that question depends upon the further question, Who prescribes the duty of the sheriff?

We have always assumed from the unbroken current of decisions for more than 125 years that the States by their statutory and common law prescribe the duty of a sheriff to his prisoner. I imagine, therefore, that the measure of duty and the penalties and consequences for failure to perform that duty vary in the different States of the Union. Furthermore, the law prescribing the duties of sheriff is subject to amendment by the States from time to time, so that the measure of duty not only varies from State to State but varies from time to time. Then how could Congress say when a sheriff has failed to do his duty? If Congress does set up a measure of duty as it seeks to do in the general terms of the bill under consideration when it says, speaking of a sheriff "who fails, neglects, or refuses to make a reasonable effort to prevent such person from being so put to death," then Congress is prescribing the duty of a State officer and fixing the measure and bounds of his duty and imposing penalties for failure to live up to the standards fixed by Congress. But the gentleman from Kansas, being learned in the law, knows that question of "negligence" and of "reasonableness" are mixed questions of law and fact. In this case the ingredient of law is furnished by the State governments, and that ingredient differs in the different States, and if a sheriff were being tried under this statute not only would the "facts" surrounding the case be introduced in evidence on the issue of "negligence" and "reasonable effort" but the law of the particular State with reference to the duty of the sheriff under the circumstances would also have to be offered in evidence, and as the law will differ in the different States, then we will have the Federal courts in one State prosecuting for violation of the antilynching law hold a sheriff to one measure of duty and in another State to another measure of duty. In one State under given evidence the sheriff will go free and in another State, under an identical set of facts, the sheriff will go to the penitentiary. Then what will become of the ideals of equal protection of the laws in the Federal courts? It will manifestly be unfair and unequal and unjust for the Federal courts for the avowed purpose of affording equal protection of the laws to set up machinery that will accomplish such unequal results.

JURY TRIAL IN STATE COURT NOT A FEDERAL RIGHT.

In reading over the argument of the distinguished gentleman from Ohio [Mr. BURTON] I observe that he seems to rely almost as much upon dissenting opinions as upon the opinions of the court. I admit that dissenting opinions are often instructive for the purpose of illustrating the real decision of the court by way of contrast. But I must confess to astonishment at the concluding point made by the gentleman. Evidently he has given this bill earnest consideration. He has had long and honorable experience in both the House of Representatives and the Senate; he is one of the most conspicuous advisers of the majority party and a gentleman of liberal scholarship. This gentleman tells us—

> the strongest argument for this bill is one which has received only scant attention. * * * The Constitution says the trial of all crimes, except in cases of impeachment, shall be by jury. * * * Now, do you mean to say to me that the National Government does not have the power to enforce that provision of trial by jury where it is disregarded on so large a scale? Is that provision of the Constitution for trial by jury a vanishing shadow without substance?

And again, in answer to a question by the gentleman from Maine [Mr. HERSEY], asking if a man lynched in Ohio is denied equal protection of the law, the gentleman from Ohio replied:

> He is entitled by the Constitution of the United States to a trial by jury.

Now, the gentleman from Ohio argues that merely because a small percentage, a very small percentage of all persons charged with crime in the country are lynched by mobs, that the State courts have abdicated and are to be displaced by Federal courts. I am very slow to take issue with such an eminent statesman as the gentleman from Ohio, but I must be bound by the decisions of the Supreme Court rather than his personal opinion.

If the gentleman will refer to the case of Walker *v.* Sauvinet (92 U. S., 90), he will find that the opinion of the court was to the effect that the citizens of a State are not entitled to jury trial as a matter of Federal right. He will find that article 7 of the amendments, and, in fact, all of the first 10 of the amendments, restrict and regulate only Federal power and the Federal

courts. He will find that due process of law under the fourteenth amendment merely means that the prisoner shall be tried by the "general law of the State"; that is, that all prisoners shall have due and fair notice of the crimes with which they are charged and shall have a reasonable opportunity to prepare and to make their defense, and that all charged with the same crime shall be tried in the same way. State courts may reduce their juries from 12 to 8, or to 6, or to 4, or may provide that a bench consisting of several judges may try issues of fact, as well as law, in criminal cases. Chief Justice Waite was one of the soundest and most conservative lawyers that ever sat upon the Supreme Bench. Born in Connecticut, he was admitted to the bar in Ohio in 1839, and was appointed Chief Justice from that State in 1874. If the gentleman from Ohio will refer to Rose's Notes upon the case of Walker *v.* Sauvinet (supra), he would observe that the same has been followed and confirmed in numerous cases from the Supreme Court of the United States and of most of the States. The right of trial by jury for a crime committed in a State and against the laws enacted by a State in pursuance of its police powers for the protection of life, liberty, and property is not a Federal right, and not being a Federal right the same can not be protected by Federal legislation. What the gentleman from Ohio calls "anarchy" is mere lawlessness, mere crime, his opinion to the contrary notwithstanding. Before the Federal Government can step in and constitutionally take charge of the administration of justice within a State the State government must cease to be republican in form; that is, it must cease to be a representative government resting upon the will of the majority. If this argument by the gentleman from Ohio that the right of trial by jury for a crime against the laws of a State is a Federal right and should be protected by Federal legislation is the strongest argument that can be adduced, then the language is inadequate to depict the weakness of the other arguments. I do not dispute with the gentleman that he is correct in saying that his argument is the strongest, because he is capable of judging; and judging by the length of time allowed him for the discussion it is evident that his colleagues on that side esteem his opinion upon such matters as the very strongest. Yet all such opinions combined could hardly be expected to overrule the unbroken line of decisions of the Supreme Court of the United States. In the face of those decisions the strongest argument for the antilynching bill crumbles like a house of cards upon a sand pile in a rainstorm.

NO CHANCE TO CHANGE CONSTRUCTION OF FOURTEENTH AMENDMENT.

The distinguished gentleman from Ohio [Mr. BURTON] reminds us that some contemporary writers, including Mr. Blaine, thought that the Supreme Court by its decisions had unduly restricted the scope and force of the fourteenth amendment, and presumably the gentleman from Ohio shares the confidence of Prof. Burgess, whom he commends by quoting from, in the belief that the day will come when such decisions as the Slaughterhouse cases will be found to be intensely reactionary and will be "overturned." The gentleman will find that controversy referred to in the opinion of the court itself at page 96 of the case of Twining *v.* New Jersey (211 U. S.), where eight of the judges, Justice Harlan alone dissenting, concurred in an opinion using this language:

> On the other hand, if the views of the minority had prevailed, it is easy to see how far the authority and independence of the States would have been diminished by subjecting all their legislative and judicial acts to correction by the legislative and review by the judicial branch of the National Government. But we need not now inquire into the merits of the original dispute. This part at least of the Slaughterhouse cases has been steadily adhered to by this court, so that it was said of it, in a case where the same clause of the amendment was under consideration (Maxwell *v.* Dow, 176 U. S., 581, 591): "The opinion upon the matters actually involved and maintained by the judgment in the case has never been doubted or overruled by any judgment of this court." The distinction between National and State citizenship and their respective privileges there drawn has come to be firmly established.

Does the gentleman from Ohio think as a practical proposition that the Supreme Court of the United States will ever consent to overturn the scores of its own decisions based upon the Slaughterhouse case and the thousands of decisions in the State courts and in the Federal courts of inferior jurisdiction predicated upon the doctrines of that case? The Slaughterhouse case was only one of about 700 cases in number where the opinions of the court were written by that great jurist, Justice Samuel F. Miller. Though a native of Kentucky, he was an ardent abolitionist and moved to Iowa in 1850. He was the leader of his party in that State and was a disciple of the political philosophy of Alexander Hamilton and the constitutional principles of John Marshall, thus believing in a strong central Federal Government. Appointed by President Lincoln to the Supreme Court in 1862, he served on the court for nearly 30 years, during a trying period, and it was said of him that the—

> finding (1862) of such a judge by the President was scarcely less fortunate than the finding of such a President [Lincoln] by the country.

To his dying day he was proud of the moral courage and intellectual acumen manifested by him in the Slaughterhouse case. Does the distinguished gentleman from Ohio [Mr. BURTON] think there will ever be found upon the Supreme Bench justices who will likely be more friendly to his view of the purpose and intention of the fourteenth amendment than were those judges who composed the court when the Slaughterhouse case was decided in 1872, and the case of United States *v.* Cruikshank (92 U. S.) in 1875, Virginia *v.* Rives (100 U. S.) in 1879, United States *v.* Harris (106 U. S.) in 1882, the Civil Rights cases in 1883, and Barbier *v.* Connolly (113 U. S.) in 1884? All the members of the court on those several dates were Hamiltonian Federalists and Republicans except Justices Fields and Clifford and sympathized deeply with the original purpose of the fourteenth amendment to save the Negroes from oppressive State action at the hands of State governments controlled by white people. In view of the remoteness of that period, when some statesmen hoped to create not only political but social and civil equality between whites and blacks, and in view of the fact that saner convictions have come upon the people of all sections, and in view of the present composition of the Supreme Court of the United States, does the gentleman from Ohio [Mr. BURTON] think that the confidence of Prof. Burgess that the Slaughterhouse case and the scores of other cases predicated upon it will ever be reversed and overturned by the Supreme Court of the United States?

WAS THERE ANARCHY IN ARIZONA?

Referring to what the gentleman from Ohio [Mr. BURTON] characterizes not as crime and ordinary lawlessness but as "anarchy," which, in effect, would justify supplanting and sidetracking the whole State government, what does the gentleman think of the decision of the Supreme Court of the United States, filed December 13, 1920, in the case of United States *v.* Wheeler (254 U. S., 281)? The gentleman will recall that in that case 25 citizens of Arizona were indicted in a Federal court charging them with oppressing, intimidating, and threatening 221 persons, citizens of the United States, residing in Arizona, but not citizens of Arizona, by seizing with force of arms and placing said 221 persons on a train and transporting all of them into the State of New Mexico, releasing them in said State with the threat of death or great bodily harm if they ever returned to Arizona. Would not the gentleman call that "anarchy," and would he not think that citizens of the United States had a right to stay in Arizona as long as they wanted to so long as they obeyed its laws, and if any citizens of Arizona with guns and pistols drove them like cattle into a freight train and hauled them across the State line and dumped them in New Mexico, would not the gentleman think that some "Federal right" was violated and that the offenses thus committed should be indictable and punishable in the Federal court?

Would it not be a good idea to amend the pending bill so as to meet just such an emergency? Yet the Supreme Court of the United States followed this much-criticized Slaughterhouse case by a unanimous opinion, save one, holding that these private citizens of Arizona committed no invasion of any "Federal rights" by forcibly driving and carrying 221 citizens of the United States at one time out of the State and expressly approved the case of United States *v.* Harris (106 U. S., 629) and the Slaughterhouse case.

ARGUMENT OF CHARLES E. HUGHES FOR "STATES RIGHTS."

I assume that the gentleman from Ohio [Mr. BURTON] and all the gentlemen who say that they believe that this antilynching bill is constitutional will agree that Hon. Charles E. Hughes is not only a great lawyer and statesman and diplomat but was a great justice of the Supreme Court of the United States. Mr. Hughes was the attorney who represented the 25 citizens indicted in the Federal court of Arizona when the case was argued in the United States Supreme Court, and the brief of Mr. Hughes is a brief supporting the contention of those who charge that the antilynching bill is unconstitutional. Therefore, for the benefit of Members and for the benefit of the country I will extract and place into the RECORD a portion of the brief of Mr. Hughes in that case, in which he cites the same cases that I and others opposing the antilynching bill have cited to establish the propositions that there is a "Federal citizenship" and there is a "State citizenship," and that there are rights respecting each of them, and that Congress can not legislate under the fourteenth amendment to protect those rights which the citizens derive from the States. It is plainly stated in the brief that "the right of life, liberty, and property is left

to the protection of the several States and that the jurisdiction of the United States is excluded therefrom." Herein follows the extract:

[From brief of Charles E. Hughes, now Secretary of State.]

This distinction between Federal rights which protect the citizen simply against State action, and Federal rights which protect the citizen against the action of individuals, abundantly established by decisions of this court (United States *v.* Cruikshank, 92 U. S., 542, 554, 555; Virginia *v.* Rives, 100 U. S., 313, 318; United States *v.* Harris, 106 U. S., 629, 639; Civil rights cases, 109 U. S., 3, 11–13; James *v.* Bowman, 190 U. S., 127; Barney *v.* City of New York, 193 U. S., 430; Hodges *v.* United States, 203 U. S., 1, 14–16), has been disregarded in this prosecution. (See also Karem *v.* United States, 121 Fed. Rep., 250; United States *v.* Moore, 129 Fed. Rep., 630; United States *v.* Powell, 151 Fed. Rep., 648, affd. 212 U. S., 564.)

It thus appears that it is not enough for the Government to establish that there is a Federal right, in order to invoke paragraph 19, if it appears, as we submit it does clearly appear in the present case, that the right is of that class which connotes protection only against State action.

The decisions may be searched in vain for any authoritative precedent applying paragraph 19, unless there is a right to protection as against individual action and not simply as against State action. (Ex parte Yarbrough, 110 U. S., 651; Guinn *v.* United States, 238 U. S., 347; United States *v.* Mosley, 238 U. S., 383; United States *v.* Butler, Fed. Cas. No. 14,700; United States *v.* Crosby, Fed. Cas. No. 14,893; Felix *v.* United States, 186 Fed. Rep., 685; United States *v.* Stone, 188 Fed. Rep., 836; Aczel *v.* United States, Fed. Rep., 232, 652; United States *v.* Waddell, 112 U. S., 76; Haynes *v.* United States, 101 Fed. Rep., 817; Buchanan *v.* United States, 233 Fed. Rep., 257; Logan *v.* United States, 144 U. S., 263; in re Quarles, 158 U. S., 532; Motes *v.* United States, 178 U. S., 458; United States *v.* Lancaster, 44 Fed. Rep., 885, 896; United States *v.* Patrick, 54 Fed. Rep., 338; Davis *v.* United States, 107 Fed. Rep., 753; United States *v.* Morris, 125 Fed. Rep., 322; Smith *v.* United States, 157 Fed. Rep. 721.)

As examples of prosecutions which have failed because of the prosecutor's inability to point out, to the satisfaction of the court, the constitutional provision securing the right said to have been conspired against see United States *v.* Cruikshank, 92 U. S., 542; Hodges *v.* United States, 203 U. S., 1; United States *v.* Gradwell, 243 U. S., 476; Karem *v.* United States, 121 Fed. Rep., 250; McKenna *v.* United States, 127 Fed. Rep., 88; United States *v.* Eberhart, 127 Fed. Rep., 254; United States *v.* Moore, 129 Fed. Rep., 630; United States *v.* Powell, 151 Fed. Rep., 648, affd. 212 U. S., 564; United States *v.* Bathgate, 246 U. S., 220.

The right of a citizen of the United States to reside and work within the bounds of the United States wherever he may choose is a fundamental right pertaining to his individual liberty. Like other fundamental rights of life, liberty, and property, so far as interference therewith on the part of individuals is concerned, it is a right which the Constitution of the United States leaves to the protection of the several States having jurisdiction. So far as there is a right pertaining to Federal citizenship to have free ingress or egress with respect to the several States, the right is essentially one of protection against the action of the States themselves and of those acting under their authority. (Slaughterhouse cases, 16 Wall., 36, 76; Corfield *v.* Coryell, 4 Wash. C. C., 371.)

The privileges and immunities clause of Article IV, paragraph 2, does not confer a right of protection against the acts of individuals, but is aimed at the hostile action of the States. It is this clause which gives the citizens of the several States "the right of free ingress into other States and egress from them." (Paul *v.* Virginia, 8 Wall., 168, 180; Slaughterhouse cases, 16 Wall., 36, 75; Corfield *v.* Coryell, 4 Wash. C. C., 371, 381; Ward *v.* Maryland, 12 Wall., 418, 430.) It confers no right whatever with respect to the action of individuals, but only affords protection as against the hostile action of the States and their agencies. (Slaughterhouse cases, supra, 76, 77; U. S. *v.* Harris, 106 U. S., 629, 643; see also Hodges *v.* U. S., 203 U. S. 1, 15.)

The provisions of the fourteenth amendment are also concerned with action by the States and do not confer a Federal right to protection as against the action of individuals in the absence of action by a State. (Slaughterhouse cases, supra, 77; Civil Rights cases, supra, 11; U. S. *v.* Cruikshank, 92 U. S., 542, 555; see also Va. *v.* Rives, supra, and U. S. *v.* Harris, supra.)

DENNISON *v.* KENTUCKY STILL LAW IN PROPER CASES.

A brilliant and striking argument was made by the gentleman from Kansas [Mr. LITTLE] on January 10, and in common with many advocates he pronounces that "there is absolutely no question about the constitutionality of the antilynching bill." The great confidence of this gentleman in his position would justify a reexamination of the cases and principles announced by him. I believe that the gentleman will find that he has assumed that merely because a case proves something, that therefore it proves his proposition. In the first place, the gentleman from Kansas refers to the case of Kentucky *v.* Dennison, (24 Howard, U. S., p. 66), and tells us that if the doctrine of said case stands, then the supporters of the antilynching bill are "licked"; but he announces that the case of Dennison against Kentucky has been "reversed." I think if the gentleman will consult Rose's Notes on the Dennison case, he will find that it has been frequently approved and followed in cases relating to interstate extradition, and I believe that every Member who has been a governor of a State or the attorney general of a State, and every lawyer who has had cases relating to interstate extradition will agree with me that the Dennison case is the law to-day, unreversed and not overruled. Therefore, accepting the postulate of the gentleman from Kansas [Mr. LITTLE], if this were a mere debating society, we could pronounce him out of court. But the question is a large one and involves several considerations of constitutional law, and we will proceed to examine the cases which the gentleman from Kansas [Mr. LITTLE] vociferously and emphatically announces sustain beyond a doubt the constitutionality of the antilynching bill. He confines himself mostly to the cases found in One hundredth United States, and to opinions written mostly by Mr. Justice Strong, who was on the bench from 1870 until 1880. He was a distinguished lawyer and advocate of Philadelphia. Mr. Hampton L. Carson, of the Philadelphia bar, in part 2 of his History of the Supreme Court, on page 463, uses this language respecting Mr. Justice Strong:

Upon certain questions his convictions were so strong—stubborn, in fact—as to amount to what his critics pronounced to be prejudice, while his friends admired the boldness of his views and the tenacity with which he adhered to them.

Now, if we will remember the principle that the Federal Government undoubtedly has and always had from its very beginning, the power to enforce by appropriate legislation all constitutional authority, so as to maintain itself and all its agencies, then the case will be plain and dicta that have been quoted will appear in their true relation. The first case of Tennessee *v.* Davis (100 U. S., p. 257) merely upholds the constitutionality of the statute removing into the Federal court the criminal prosecution commenced in the State court of Tennessee against a revenue officer charged with the murder of a Tennessee citizen. But the officer charged in his petition that the killing was done in self-defense and while exercising and enforcing his duty as a United States officer. Undoubtedly the United States has the power to collect revenue, and must collect revenue by officers, and must protect its officers in collecting revenue, and as a means of protection can remove to a Federal court a case against an officer for an act committed by him in pursuance of his power and authority as a Federal revenue officer. That power existed for 90 years before the fourteenth amendment was adopted, and so the fourteenth amendment was not involved in the case, and was not even mentioned in the case, and therefore the case throws no light upon the present controversy. In like manner the gentleman from Kansas [Mr. LITTLE] announces that the case of Ex parte Siebold (100 U. S., 371) supports his construction and interpretation of the fourteenth amendment. I respectfully submit that the Siebold case was a prosecution against certain judges of election in Maryland, charging that they had violated the acts of Congress at an election where Members of Congress were being voted for. The opinion of the court was delivered by that great jurist, who also wrote the opinion of the court in the Civil Rights cases, in One hundred and ninth United States, Mr. Justice Bradley, of New York, a great lawyer, who was appointed to the Supreme Court in 1870, and continued to serve until his death 22 years later. That case involved no consideration of the fourteenth amendment, which is not even mentioned in the lengthy opinion, and there is no doubt about the proposition that the Federal Government has always had authority to punish persons, whether they happened to be officers of the States or not, for violation of constitutional Federal statutes. So the case of Ex parte Clarke (100 U. S., p. 399) raises the question as to the power to punish the judges of election in Ohio at an election where Members of Congress were being voted for, and involved in no way the fourteenth amendment, which is not even mentioned.

ACT OF CONGRESS UNCONSTITUTIONAL IN NEWBERRY CASE.

The Supreme Court about one year ago sustained the power of Congress to regulate elections for Federal offices, but held to be unconstitutional the corrupt practices act of Congress so far as the same undertakes to limit the amount of money that may be spent by a candidate for a party nomination in a primary election. Though the court was divided and vigorous dissenting opinions filed, yet the court adopted a conservative and logical construction of the Constitution, to the effect that at the time the corrupt practices act was enacted by Congress, and at the time the acts for which Mr. TRUMAN H. NEWBERRY and associates were indicted were done, there was no Federal law for the election of United States Senators by the people, and therefore a law regulating a primary before the people was unconstitutional.

If the Supreme Court would thus override the act of Congress expressing its judgment against the expenditure of vast sums of money in order to obtain nomination and thereby ultimately to be elected, whereby the doors of the penitentiary were opened and a seat in the United States Senate was confirmed, surely it can not be reasonable to expect that the Supreme Court will, after 50 years since the Slaughterhouse case was decided, overturn its doctrines and follow with the iconoclastic bludgeon and overturn United States against Harris, and the Civil Rights case, and the case of James *v.* Bowman (190 U. S.), decided in 1902, and the recent case of United States *v.* Wheeler (254 U. S.), decided in 1920.

"OBITER DICTA" BY JUSTICE STRONG.

We next come to the case of Virginia *v.* Rives (100 U. S., 313), which merely held that the petition for the removal of the case from the State court to the United States court came too late and was not in proper form. It is true the opinion of the court by Mr. Justice Strong has many things to say, like the dissenting opinion of that wonderful personality Mr. Justice Field. I quote the following from the opinion of Mr. Justice Strong, at page 321:

> But when a subordinate officer of the State, in violation of State law, undertakes to deprive an accused party of a right which the statute law accords him, as in the case at bar, it can hardly be said that he is denied or can not enforce in the judicial tribunals of the State the rights which belong to him.

And at page 322 we extract this line with special reference to the language of the same justice in the case of Ex parte Virginia:

> If, as in this case, the subordinate officer whose duty it is to select jurors fails to discharge that duty in the true spirit of the law; if he excludes all colored men solely because they are colored; or if the sheriff to whom a venire is given, composed of both white and colored citizens, neglects to summon the colored jurors only because they are colored; or if a clerk whose duty it is to take the 12 names from the box rejects all the colored jurors for the same reason, it can with no propriety be said the defendant's right is denied by the State and can not be enforced in the judicial tribunals.

Thus Mr. Justice Strong acknowledges that mere lawless and unauthorized acts of State officials, even if those acts do deprive certain citizens of their equal rights under the law, are not the acts of the "States," and are not chargeable against the States, and on account of such acts the State as a State can not be said to have deprived a person of the equal protection of the law.

THE REAL POINT DECIDED IN EX PARTE VIRGINIA.

The gentleman from Kansas [Mr. LITTLE] quotes extensively from the case of Ex parte Virginia (100 U. S., 339), and seems to be entirely confident that this case concludes the question forever beyond the shadow of a doubt and beyond the vale of dispute. An examination of that case will disclose the fact that Judge Coles, of Virginia, was indicted in a Federal court for violating section 4 of the civil rights act of March 1, 1875, making it a criminal offense tryable in the Federal court for any person, or officer, to exclude or fail to summon any citizen as a juror in either the United States court or in the State court on account of race, color, or previous condition of servitude.

There was a demurrer to the indictment and appeal from order overruling the demurrer directly to the Supreme Court of the United States, and the State of Virginia intervened, praying for a writ of habeas corpus for the discharge of its officer, claiming that Judge Coles was essential to the administration of justice in Virginia. The questions were presented, therefore, as between the United States (whose act of Congress was charged to have been violated) and Judge Coles and the State of Virginia, asking for his release under a writ of habeas corpus on the other hand. Mr. Justice Strong, in delivering the opinion of the court, did not discuss the constitutionality of the act itself, which sought to force by congressional action the States to place both white and Negro jurors in the jury box. Mr. Justice Strong based his opinion upon the assumption that the act in question was constitutional, and from that point of view the effect of his decision, leaving out mere dicta and irrelevant arguments, is logical. If the act of Congress on which the indictment is predicated was constitutional, then it made no difference who violated the act. The mere fact that County Judge Coles or even the governor of the State happened to be the person who violated the act of Congress would not exempt such violator from accountability in a Federal court. If the governor of a State sells whisky, in violation of admitted Federal laws, the governor may be arrested, tried, convicted, and punished. If the chief justice of a State violates the laws of Congress punishing interference with an election for Federal officeholders, such as Members of Congress, then the chief justice may be indicted, convicted, and punished. So we see that Judge Coles was not liable to indictment and prosecution "because he was a State officer" and "because as a State officer he was selecting only white persons to serve as jurors and was excluding all black persons because they were black," but was prosecuted because he was violating what Justice Strong thought was a constitutional act of Congress, and Judge Cole could not interpose his official connection with the State of Virginia to exempt him from liability to answer in a Federal court. He was liable in spite of being a State officer.

VIEWS OF DISSENTING OPINION LATER ADOPTED AND STILL PREVAIL UNDISTURBED.

Now, it will be observed that Mr. Justice Field, with whom Mr. Justice Clifford concurred, dissented from the majority opinion and attacked the constitutionality of the act of Congress itself and expressed their opinion that the United States could not lawfully and constitutionally enter within a State and undertake to control the laws for the administration of justice by prescribing the qualifications for juror in State courts. They pointed out that service as a juror is not a fundamental right, but is a privilege conferred by the State and a duty imposed by the State. In effect they argued that the United States could no more force colored jurors in the jury box than they could force colored judges on the bench or colored governors in the executive chairs. The sentiment back of the attitude of Mr. Justice Strong is shown by this extract from his opinion:

> One great purpose of these amendments (thirteenth and fourteenth amendments) was to raise the colored race from the condition of inferiority and servitude in which most of them had previously stood into perfect equality of civil rights with all other persons within the jurisdiction of the States.

That being his political philosophy, it is easy to understand his mental processes in arriving at the constitutionality of the act.

"THE CIVIL RIGHTS CASES" FOREVER FIXED THE LAW.

But we will pass on to the Civil Rights cases, which the gentleman from Kansas [Mr. LITTLE] seems to think support the proposed legislation, "to punish a sheriff in a Federal court," and this "the Supreme Court—inferentially in the Civil Rights case—has held to be very proper." In the Civil Rights cases decided in 1883 after the most elaborate arguments in five cases coming from the States of Kansas, California, Missouri, New York, and Tennessee, just 14 years after the decision in Ex parte Virginia, the view expressed by the dissenting opinion of Mr. Justice Field in Ex parte Virginia as to the constitutionality of the civil rights act of March 1, 1875, was followed, adopted, and confirmed. The only dissenting opinion in the Civil Rights cases was by Mr. Justice Harlan and the opinion of the majority was written by Mr. Justice Bradley. While the indictment in the Civil Rights cases and the causes of action were predicated upon violations of sections 1 and 2 of the civil rights act of March 1, 1875, and, therefore, strictly and technically only those two sections, Nos. 1 and 2, were held to be unconstitutional, yet the reason and logic of the court would extend to the entire extent of the act. Therefore, I feel safe in stating that if section 4 of the civil rights act had been specifically before the court, it would have gone down and would have been declared null and void, just as sections Nos. 1 and 2 were. But we must remember that section 4 of the civil rights act of March 1, 1875, is the Federal legislation upon which the prosecution of the opposition in Ex parte Virginia were based. If that section was unconstitutional, as the purport and logic of all the subsequent cases would force us to conclude, then the decision itself falls, and the logic of the decision falls and the language of Mr. Justice Strong falls with them. The decision in Ex parte Virginia, like the house of the parable in the Bible, was built upon sand. It did not endure and fails in force and effect with the decision in the Civil Rights cases, which have been followed and affirmed time and time again up to the last case of United States *v.* Wheeler (254 U. S.).

PROF. BURGESS AGAINST PROF. BURGESS—"APPEAL FROM CÆSAR DRUNK TO CÆSAR SOBER."

The distinguished gentleman from Ohio [Mr. BURTON] quotes from Prof. Burgess, but he does not identify which Prof. Burgess, nor cite us to the volume and page of the quotation. If he refers to Prof. John W. Burgess, author of "Reconstruction and the Constitution," the professor of constitutional law in Columbia University, then I respectfully refer the gentleman and Members to pages 244, 245, 254, 255, 257, 296, 297, and 298 of said work, published by Charles Scribner's Sons in 1902. There seems to be some inconsistency in the views and position of Prof. Burgess, assuming that we both quote from the same man. Speaking of the civil rights act of May 31, 1870, Prof. Burgess plainly points out that the fourteenth amendment is addressed to "action by the State," and is intended to relieve against discriminatory and unfair and unequal class legislation and uses in part this language:

> There is not the slightest doubt in the mind of any good constitutional lawyer at the present time—1902—that Congress overstepped its constitutional powers in that part of the enforcement act of May 31, 1870, which related to the exercise of suffrage and intrenched upon the reserved powers of the States.

Again, on page 258 he tells us that the first part of the act of April 20, 1871, known as the Ku Klux act, was "unquestionably unconstitutional and an encroachment" upon the powers of the States, and that the fourteenth amendment could not be stretched to reach the acts of one or more private persons. If it be the same Prof. Burgess, then if his opinion is worth something on constitutional law it may also be worth something upon matters of political science, and he tells us at the bottom of page 244 that "from the point of view of sound political science the imposition of universal Negro suffrage upon the southern communities, in some of which the Negroes were in large ma-

jority, was one of the 'blunder crimes' of the century." There are many pages of interesting political philosophy in that volume of Prof. Burgess that I earnestly hope the gentlemen supporting this antilynching bill will read.

Dr. W. W. Willoughby, professor of jurisprudence at Johns Hopkins University, formerly an attorney at the District of Columbia bar and son of one of the attorneys in the prosecution of Judge Coles, reported in Ex parte Virginia (100 U. S.), is a well-grounded constitutional lawyer, and from a review of his commentaries I must conclude that he is a strong Hamiltonian Nationalist. After a review of all of the cases respecting the interpretation of the fourteenth amendment, Dr. Willoughby, at page 193, volume 1, of his work on the Constitution, summarizes the results as follows:

By way of résumé we may say that, as interpreted by the Supreme Court, the adoption of the fourteenth amendment has not brought about any fundamental change in our constitutional system. No new subjects have been brought within the sphere of direct control of the Federal Government. No new privileges and immunities of Federal citizenship have been created or recognized. To Congress has been given no new direct primary legislative power. It has not been authorized by the amendment to determine and define the privileges and immunities of Federal citizens nor to define and affirmatively to provide for the protection of the rights of life, liberty, and property, nor by direct legislation to enumerate and describe the privileges which shall constitute the equal protection of the laws. The only legislative power granted to Congress by the amendment is the power to provide modes of relief in cases where the States have deprived individuals or corporations of life, liberty, and property without due process of law, or denied to anyone within their jurisdiction the equal protection of the laws. The supervisory powers of the Federal courts have been enormously increased, as by the amendment, they may examine every claim of illegal violations by States of the prohibitions laid upon them by the amendment and where the claim is sustained grant the necessary relief, either by the issuance of the appropriate writ or by holding void the offending State laws. In fine, then, the fourteenth amendment has operated rather as a limitation upon the powers of the States than as a grant of additional powers to the General Government.

ONLY CASES ON FOURTEENTH AMENDMENT HELP HERE.

It is irrelevant to the issue here, which is the ascertaining of the true intent and effect of the fourteenth amendment, to cite such cases as those under the Mann white slave act and the safety appliance act and others based on the admitted power in Congress to regulate by affirmative legislation interstate commerce, or the Legal Tender cases based on the power to borrow money and raise revenue, or the appropriation of money to build post roads, or to prescribe punishment for violation of law by those conducting a Federal election, or by outsiders even in such cases. While the makers of the Constitution never saw nor dreamed of a steam train, nor telegraphs and telephones, nor a Federal reserve banking system, nor hundreds of other such matters, yet where Congress is given affirmative power over the general subject, such as interstate commerce, or finance, taxation, and money, or to raise an Army and Navy and conduct war, or to prohibit slavery or involuntary servitude, or to prohibit the manufacture, sale, and transportation of intoxicating liquors, then any legislation logically and reasonably relating to such subjects will be sustained by the Supreme Court as properly within the power of Congress.

SECTION 1 OF FOURTEENTH AMENDMENT ANALYZED.

But we are here dealing with an entirely different subject and a different kind of power in section 1 of the fourteenth amendment. A full and fair statement of the language is:

No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor shall any State (make or enforce any law to) deprive any person of life, liberty, or property without due process of law, nor (shall any State make or enforce any law which shall) deny to any person within its jurisdiction the equal protection of the law.

While a State may act by its judicial and executive departments as well as by its legislative, yet the acts of its courts and governor, sheriffs, constables, and others must be so continuous and consistent—not an occasional instance of unfairness and inequality; no government can prevent occasional miscarriages of justice—as to amount to a rule of action, and a rule of action is law, and in such case if the same rule of action is applied in all similar cases—e. g., if all Negro prisoners were lynched, or even all charged with capital crimes, or even all charged with rape, were uniformly lynched—it might be held "State" action.

LANGUAGE OF FOURTEENTH AMENDMENT KNOWINGLY CHOSEN.

A prohibition against State action being found in section 10 of Article I of the Constitution was well understood by those who framed the fourteenth amendment, and they saw there the prohibition against any State levying any impost or duty on imports or exports was guarded by the condition, "without the consent of Congress," and, further, that "all such laws shall be subject to the revision and control of the Congress." Therefore, Congress had no "power to revise and control" the laws of the States as to other prohibited matters, such as laws impairing the obligations of contracts.

Section 5 of article 14 of amendments can not, therefore, mean the same thing as "power to revise and control" State laws. Section 5 of amendment 14 being identical with section 2, amendment 13, and section 2, amendment 15, could relate only to the affirmative—several in number—powers contained in the fourteenth amendment. Amendment 15 will mean the same thing if it be stated thus:

Neither the United States nor any State shall deny or abridge on account of race, color, or previous condition of servitude the right of citizens of the United States to vote.

Yet section 5507, Revised Statutes, was held unconstitutional because in terms it applied to all elections, State and Federal, condemning individual acts of private citizens, where "Congress has no constitutional power to punish bribery at all elections."

The court distinctly said in James *v.* Bowman (190 U. S., 127) that the "amendment (15) relates solely to action by the United States or by any States, and does not contemplate wrongful individual acts." The distinguished gentleman from Kansas [Mr. LITTLE] told us that said case of Bowman *v.* James, supra, was "simply another instance in which the Government needed a good lawyer." He says the indictment was merely defective because it failed to allege that the intimidation of voters was "because of race, color, and previous condition of servitude." But the court held the statute (sec. 5507) unconstitutional. We have never heard that a statute can be held unconstitutional merely because an indictment is defective. In such case the action alone would be merely dismissed for failure of material allegations. The Government not only needed a good lawyer in court, but it needed a good lawyer in Congress. Will the gentleman from Kansas, in addition to other amendments he will propose, also propose to amend the bill to this general effect: "Whoever shall lynch or assist in lynching any person on account of race, color, or previous condition of servitude"?

The able and eloquent gentleman from Kansas [Mr. LITTLE], quoting from the dissenting opinion by Justice Field (100 U. S., 414), commends his "logical deductions" as to the consequences of the majority opinion in that, and also such cases as Ex parte Virginia. And here, indeed, is the "logical deduction," the revolutionary destruction of our wonderful Federal system:

These decisions do indeed, in my judgment, constitute a new departure. They give to the Federal Government the power to strip the States of the right to vindicate their authority in their own courts against a violator of their laws when the transgressor happens to be an officer of the United States or alleges that he is denied or can not enforce some right under their laws. And they assert for the Federal Government a power to subject a judicial officer of a State to punishment for the manner in which he discharges his duties under her laws. The power to punish at all existing, the nature and extent of the punishment must depend upon the will of Congress and may be carried to a removal from office. In my judgment—and I say it without intending any disrespect to my associates—no such advance has ever before been made toward the conversion of our Federal system into a consolidated and centralized government.

Such, indeed, would have been the "beginning of a new era" of centralized federalized bureaucratic red-tape tyranny, except for such clear-headed and courageous men as Justice Stephen Johnson Field. Well might he say (100 U. S., p. 353):

It is difficult to speak of this ruling in language of moderation.

What would he say of this antilynching bill? Born in Connecticut, the son of a Congregationalist minister, 1816, the brother of Cyrus W., who united the world by submarine cable, of David Dudley, the reformer of legal procedure, and of Henry Martyn, a great editor, he was appointed by President Lincoln in 1863 to the Supreme Court, and served 36 years, the longest in the history of the court, and later his nephew, David J. Brewer, came in 1890 to sit beside him on the Supreme Bench. Justice Field was no apologist for lynching, and he himself once saved a man charged with stealing gold from being lynched during the "gold rush" in 1850. His own life was frequently threatened and was saved once, only when the deputy United States marshal killed the assailant.

This great judge saw the argument of his dissent in Ex parte Virginia and Ex parte Clarke adopted as the basis of decision in the Harris case, 1882, when Justice Harlan alone dissented, and in the Civil Rights cases, 1883, when Justice Harlan alone dissented, and his own nephew, Justice Brewer, wrote the opinion in James *v.* Bowman (190 U. S., 135) in 1902, and again Justice Harlan dissented with Justice Brown. Now, in 1920, 41 years after Ex parte Virginia was decided, in the Wheeler case (254 U. S., 289), argued by Hon. Charles E. Hughes for the winner, the Chief Justice, White, follows the reasoning and authorities inspired by the logic of Justice Field, and now Justice Clarke alone dissents. But for such strong and brave judges as Waite, Miller, Field, Bradley, Woods, Gray, Matthews, and Blatchford, who resisted the frenzy of fanaticism and the fury of partisanship, we would to-day indeed be in

the "medieval fogs" of Federal imperialism and the "sunlight of human freedom" would be gone from the States which foster liberty and local self-government. The stars representing States would have fallen from the flag and the blue field, symbolic of justice and truth, disappear from sight in the consequent darkness.

THE ONLY POSSIBLE GROUND FOR THE BILL.

I sincerely believe that if any part of this bill ever passes Congress, it will be only that section, to be much amended and modified, dealing with the neglect of a sheriff to protect a prisoner in his custody. This part is, I believe, demonstrably unconstitutional. Let us frame the syllogism. All rights of citizens under our dual government are either State or Federal, and the Federal Government can legislate to protect only Federal rights. (The Wheeler case, 254 U. S.) The rights of life, liberty, and property of individual citizens as against each other are State rights and must be protected by State laws and enforced in State courts. (The Cruikshank case, 92 U. S., 553; the Harris case, 106 U. S., 638-639; the Civil Rights cases, 109 U. S., 17.) Therefore direct and affirmative legislation by Congress to protect the life and liberty of a citizen of a State in a State and in the exercise of a State right is unconstitutional.

DISSENTING VIEWS OF JUSTICE HARLAN.

As previously stated, much can be learned by way of contrast from a dissenting opinion, because if the language of the majority opinion fails to express clearly the full meaning of the decision the dissent often clears it up, because the dissenting justice surely understands the mind of the majority, with whom he has consulted and debated, each side honestly seeking the truth. All the argument made for this antilynching bill was made by Justice Harlan in 36 pages against 17 pages of the majority opinion. Justice Harlan contended, as gentlemen for the bill contend here that "such legislation"—civil rights bill by Congress—"may be of a direct and primary character, operating upon States"—counties here—"their officers and agents"—sheriffs here—"and also upon at least such individuals and corporations as exercise public functions and wield power and authority under the State, as hotels, opera houses, railroads, schools, and so forth." Basing his opinion upon that now famous expression, mere obiter dictum, in Ex parte Virginia (100 U. S.), a decision predicated upon an unconstitutional act—section 4 of civil rights bill, March 1, 1875—as to how a State acts in part by its "executive officers," Justice Harlan contended vigorously that hotel keepers, and so forth, conducting business impressed with public interest, having special rights and duties as such under the law, were "public officers," executing public law, and their acts were the "acts of the State" and could be controlled by Congress under the fourteenth amendment. Again, Justice Harlan, page 34, says:

> This court has uniformly held that the National Government has the power, whether expressly given or not, to secure and protect rights guaranteed by the Constitution. * * * That doctrine ought not now to be abandoned.

Thus he asserts that the rights he and others not on the court thought were secured and protected by the fourteenth amendment—viz, life, liberty, and property—were, in their opinion, being abandoned.

TRUE MEANING OF CIVIL RIGHTS CASES.

Some gentlemen supporting this antilynching bill exclaim that the Civil Rights cases do not stand in their way. Some say it can be distinguished and explained away, and the distinguished gentleman and able lawyer from Kansas [Mr. LITTLE] says it actually "decides this very issue"—presumably in their favor. I respectfully submit the contrary, and submit that Justice Harlan, whose disciples they are, fully understood the decision of the majority of eight to one, and, on page 44, he tells us:

> The theory of the opinion of the majority of the court—the foundation upon which their reasoning seems to rest—is that the General Government can not in advance of hostile State laws or State proceedings actively interfere for the protection of any of the rights and immunities secured by the fourteenth amendment; * * * that congressional legislation must necessarily be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect.

Again, at page 52, Justice Harlan tells us what the court decided in the Civil Rights cases:

> The opinion of the court proceeds upon the ground that the power of Congress * * * is to correct and annul State laws and State proceedings. * * * In the absence of State laws and State action adverse to such rights and privileges the Nation may not actively interfere for their protection and security, even against corporations and individuals exercising public or quasi public functions. So I understand to be the position of my brethren.

Need there now be any doubt about the effect of the Civil Rights cases?

IS THE CRIME OF A SHERIFF THE "ACT OF A STATE"?

But gentlemen supporting this antilynching bill, picking over these old dry bones, hunting some morsel of comfort, tell us that when the sheriff, a public official, "neglects" the duty the State itself has imposed upon him and his prisoner is lynched such is "State action" and "State proceedings." Some of our friends for this bill take comfort from expressions of the majority opinion in the Civil Rights cases, page 23, "such, for example, as taking private property without due process of law"—necessarily by State laws or State proceedings, otherwise Congress could legislate against stealing—"or allowing persons who have committed certain crimes—horse stealing, for example—to be seized and hung by the posse comitatus without regular trial." This "allowing" must be continuous and with knowledge of the State authorities, and by a legal agency. The posse comitatus is not a mob but a legally summoned body of citizens to assist the regular law officers. This refers to a very common practice in colonial days, and in some States, even after independence and later in the frontier Territories and States as the "frontier" moved gradually westward. They were called "regulators" in some States and "vigilance committees" in others. In North Carolina Gov. Tryon tried to suppress them, and hanged a few of them May 16, 1771, and just four years later the survivors and associates of these same "regulators" joined in the first formal challenge to royal tyranny, the "Mecklenburg declaration of independence," May 20, 1775. The blood of patriots is the seed of liberty. It was the recognized practice for the sheriff to summon the posse comitatus as he rode in hot pursuit of the horse thief, and when apprehended all openly joined in a public hanging, went home to their families feeling only a sense of stern duty performed, and all was approved by State authority. It is true there was no such formal written statute, but it was a common and approved practice, a rule of action, a uniform course of conduct in the premises similar to the customs from which the English common law sprang. This is the practice to which Justice Bradley referred, and his full meaning must be gathered, not from a few sentences but from the whole opinion, for in the same paragraph, near the top of page 24, he says:

> The fourteenth amendment extends its protection to races and classes, and prohibits State legislation which has the effect of denying to any race or class or to any individual the equal protection of the law.

In the very next paragraph the opinion asks:

> And is the Constitution—fourteenth amendment—violated until the denial of the right has some State sanction or authority?

And in the next paragraph:

> If those laws—of the State—are adverse to his rights and do not protect him—as one of a class—his remedy will be found in the corrective legislation which Congress has adopted, or may adopt, for counteracting the effect of the State laws or State action prohibited by the fourteenth amendment.

WHAT ARE "STATE PROCEEDINGS" OR "STATE ACTIONS"?

We have no dispute as to what are "State laws." Advocates of the bill cite us to Home Telephone Co. *v.* Los Angeles (227 U. S., 287) as evidencing "State action" held in violation of the fourteenth amendment. Here the municipality, created by an agent of the State, with charter power to regulate telephone rates and exercising such discretion, passed an ordinance fixing rates admitted by demurrer to be confiscatory. In legal effect it was the same as if the legislature itself had passed the act. The court uses such expressions as these: "Possession of State power" and using same to do a wrong; "where an officer or other representative of the State in the exercise of the authority with which he is clothed misuses the power possessed to do a wrong forbidden by the amendment"; "State officers abusing powers lawfully conferred on them"; "that State powers might be abused by those who possessed them"; and, finally and conclusively, "The subject must be tested by assuming that the officer possessed the power if the act be one which there would not be any opportunity of doing but for the possession of some State authority."

Would the sheriff have no opportunity to lynch a person except as incident to his office as sheriff? Are not most of the lynchings cases where the person lynched has not yet passed into the custody of the sheriff? Will any partisan ever charge that any sheriff anywhere at any time ever used his official power to arrest a person charged with crime just for the purpose of lynching or of letting the accused be lynched? The lynching is done, not by reason and virtue of official power in the sheriff, but in spite of and in defiance of such official power. The sheriff does not by "color of office use his power to do," affirmatively, an official wrong, as did the City Council of Los Angeles, but it is only claimed here by friends of the bill that some sheriffs in rare instances, compared with all arrests, "failed and neglected," negatively and passively, to exert the full limit of personal and official power to protect a prisoner, and they must

even also admit that such "failure and neglect" is in violation of duty imposed by State law, and in no sense "in pursuance of and by virtue of and by reason of official station and power."

EXAMPLES OF "STATE ACTION" BY SUBORDINATES.

A leading case is Yick Wo *v.* Hopkins (118 U. S., 356), where the city of San Francisco officially passed an ordinance giving "discretion" to say what individuals might not carry on a laundry business in a given section, and this "discretion" was shown to be "arbitrarily" exercised to run out only Chinamen. Also Ex parte Young (209 U. S., 123), where a commission was created by the legislature with authority to fix railroad rates, and so exercised its discretionary official power as to confiscate the railroad's property. So, in Raymond *v.* Traction Co. (207 U. S., 20), a board of tax assessors exercised official discretion to assess certain property unfairly, unequally, and in a discriminatory manner. There were the official acts of a public agency. Will any person claim that any sheriff ever "failed or neglected" to protect a prisoner as an "official act," "by virtue of his office," as in discharge of "official authority with which he is clothed by the State"?

INDIVIDUALS NOT PUNISHABLE AS "CRIMINALS" BECAUSE A STATE BY "STATE ACTION" OR "STATE PROCEEDINGS" DENIES THE EQUAL PROTECTION OF THE LAWS.

The fourteenth amendment is satisfied when all persons of the same classes and all classes enjoy equal and impartial justice under the laws of the State, however much the laws may vary in the different States. (Texas *v.* Leeper, 139 U. S., 462). The action of a State can never be reviewed in a Federal court unless there be an invasion by the State of affirmative Federal power. (New Orleans *v.* L'Hote, 177 U. S., 587.) Mere miscarriage of justice in a State court is not a denial of equal protection of the laws. It is understood that ideal justice by any Government is impossible. (Gibson *v.* Mississippi, 162 U. S., 565.) Even though it be made to appear that a State court is denying a person due process of law and the equal protection of the laws, a Federal court can not enjoin the proceedings in the State court, but must wait and give the highest appellate court of the State an opportunity to correct same. (Harkrader *v.* Wadley, 172 U. S., 148.) It is absurd to say that "because of denial by a State to any person of the equal protection of the laws is prohibited (to a State) therefore Congress may establish laws for their equal protection." (Civil Rights cases, 109 U. S., 3.)

THE "ACID TEST" APPLIED.

The precise question is, Has a prisoner charged with a State crime the right to be protected then and there by physical force to the full limit of reasonable possibility? Remember rights are both State and Federal. (Wheeler Case, 254 U. S., 289.) If such be a Federal right under the fourteenth amendment, then all persons who invade that right may be made liable under a Federal law. But persons who invaded that right and took a prisoner from a sheriff and killed him (lynched him) were held not to have violated any Federal right in United States *v.* Harris (106 U. S., 629). The Cruikshank case (92 U. S., 553) holds that even after the adoption of the fourteenth amendment the rights of "life, liberty, and property" depend solely upon State protection. The fourteenth amendment did not convert what was always a State right into a Federal right. Said fourteenth amendment only prohibited the States in their laws and legal proceedings from destroying these rights of life, liberty, and property except by due process of law, and prohibited the States, by their laws, or proceedings of agents authorized by law and clothed with power under the law, and acting by virtue of official station and power, to deny to any person the uniform protection of the laws, so far as any law enforced by due process can give protection. It contemplates possible miscarriage of justice.

WHEN DO THE LAWS GIVE "EQUAL PROTECTION"?

Yick Wo *v.* Hopkins (118 U. S.) tells us it means the "protection of equal laws." It was the death knell of class legislation. It means no unfair, discriminatory, partial, favorite-serving, class-oppressing legislation. It referred to "laws" and not to persons. It also has been construed to include rulings, orders, and ordinances of such State agencies as municipal corporations, railroad commissions, tax commissions, and so forth, having discretionary power to promulgate orders having the force and effect of laws. But all such must be "in pursuance of authority conferred by the State." The official position must be "the opportunity to do the wrong." (Los Angeles case, 227 U. S., 288.) But where the act done by the agency was not authorized by the State and was in fact prohibited by the State, no Federal right is violated. It is a mere personal wrong, an individual crime, which the State must redress. (The Barney case, 193 U. S., 430.) Sheriffs are prohibited by the State laws to fail to protect prisoners, and in most States such failure is a crime and cause for removal from office.

THE REDUCTIO AD ABSURDUM OF THE ARGUMENT BASED ON "NEGLECT" AND "INACTION."

The same argument was made as to "State action by executive officer" to support the civil rights bill. (See dissenting opinion of Justice Harlan.) Now, it is the duty of a State government to give all citizens the "equal protection of the laws," and if that means actual physical defense to each individual by officers of the State, then, indeed, it would include the murder of one citizen by another or the murder by any sheriff, constable, or policeman of his personal enemy. It could just as fairly be argued that a State by "inaction," "neglect," "passivity," "failure," in not making or enacting proper criminal statutes to deter criminals and electing judges and selecting jurors who let criminals escape unpunished have thereby failed to "afford equal protection to her citizens," and that because of such failure the United States Government could step in and legislate against crime and try criminals in Federal courts.

ARE FEDERAL LAWS IDEAL AND FEDERAL COURTS FAULTLESS AND FEDERAL OFFICERS PERFECT?

To ask the question is to answer it. Federal and State laws are human. So are Federal courts and State courts. So are Federal officers and State officers—all human and liable to err. A sheriff is human. It is his duty to protect his prisoner, but it is his duty also to protect all citizens not prisoners. The sheriff has a delicate duty. When shall he begin shooting and order his deputies and the posse comitatus to shoot? That may result in the death of many innocent persons not members of any mob but innocent bystanders, attracted by idle curiosity, or perhaps persons passing on business, pleasure, or missions of mercy. This antilynching bill is not only unconstitutional but is unwise. It will demonstrably increase lynchings. As the United States marshal can not be everywhere at the same time, he will not be present with his deputies to defend the prisoner threatened by a mob.

Admittedly the marshal can not intervene till the sheriff "fails and neglects." How can the marshal decide until it is too late to save the prisoner without producing an armed conflict with State officials? Suppose the United States marshal says, "Sheriff, deliver me that prisoner. You have failed to do your duty to protect him." The sheriff answers, "It is false. I have done my duty. Here is the prisoner safe and alive." Armed conflict follows, and while State and Federal officials fight over who shall afford to the prisoner "equal protection of the law," the mob lynches the prisoner whom both State and Federal officers fail to protect. But if the marshal waits till the sheriff has actually "failed and neglected" it is too late. The prisoner is dead. Then what will be the result of any such unwise legislation? It will be that in cases of crimes where sheriffs conclude a mob will assemble to lynch a criminal, the sheriff will stay away, decline to learn anything about it, for two reasons: (1) To avoid an armed conflict with Federal officials; and (2) to escape liability in a Federal court on charges of "failure and neglect" to protect a prisoner. He will be studiously ignorant in self-defense. He will "not set foot in Michigan." The next consequence will be good, honest, brave men will not seek nor accept the office of sheriff, always a place of peril and now with doubled dangers and perils. With inferior men as sheriff, and similar State peace officers, the criminal instincts will be let loose and an orgy of crime will follow.

Mr. Chairman and Members, State officials and State citizens are Americans. They are gradually wiping out this stain on America. Do not, I beg you, increase their difficulties and aggravate the trouble. Let them build up State pride and county pride, and let all of these units of American local self-government vie with each other building healthy, vigorous, self-sustaining sentiment for law enforcement to protect life, liberty, and property. In conclusion, Mr. Chairman, I reproduce a voice from the distant past, but thereby more impressive and convincing. In speaking in the United States Senate on February 26, 1875, on the "civil rights bill," which became a law March 1, 1875, and was declared unconstitutional in One hundred and ninth United States, page 3, year 1883, Hon. Thomas F. Bayard, of Delaware, used these words:

I do not comprehend altogether the motive for pressing such a measure, and I do not wish to impute motive unless it is very clear. I can see no good to be accomplished by this bill. I can see only new and increased heart-burnings and unkindness between those races whom every good man must wish to see at peace with each other in their relative spheres of life and usefulness.

I have had much encouragement of late in the belief that a more liberal and kinder tone and sense of justice was being aroused in the breasts of men of my own race toward the black men all over the country, by which their educational facilities were being increased, and by which a better understanding was being brought about between

the races. I fear this bill will create cause of collision, of unkindness, and misunderstanding, in which pecuniary loss must occur to the white, with no benefit whatever to the black. The good sense of both parties must in some degree prevent it; but I trust such speedy decision of the court will be had as to deprive this measure of the sting, and take from it all capacity for mischievous interference by those who are disposed to find profit and power in public disorders and contention. It is in the interest of this ill-omened class that this measure is devised and pressed. It will be found to be totally without benefit to any, but fruitful of annoyance and trouble to thousands.

Mr. HARRISON. Mr. Chairman, I yield the remainder of my time to the gentleman from Alabama [Mr. HUDDLESTON].

The CHAIRMAN. The gentleman from Alabama is recognized for 17 minutes.

Mr. HUDDLESTON. Mr. Chairman, the inconsistencies of the present administration when dealing with questions of labor and industry are something fearful and wonderful to behold.

We are about to have the greatest coal strike in the history of this Nation. On April 1 next, the existing contract between the operators and the miners will expire. The operators have declined to negotiate with the miners for a new contract. They have declined to consider making a new contract. They want a strike, they are courting a strike. Yet in the face of this impending calamity, the administration lifts up its hands in helplessness and says that it will make no effort to prevent the struggle which will prove so costly to the Nation.

This coal strike will prove little less than a national catastrophe. What will it mean? It will mean first the greatest shock that business can possibly have. It will mean the most depressing influence upon economic conditions that imagination could well conceive. But more than that it will mean suffering upon the part of the public, shivering and cold to thousands of people, innocent women and children. It will mean that many lines of industry will be paralyzed, with thousands of workers thrown out of employment, and that hunger will stalk. Conditions will be even worse than they are now, when some three or four million men are out of employment, and literally tens of thousands are suffering for the common necessaries of life. It will mean that the miners and their families will be thrown out of their homes, naked to the elements. It will mean that their wives and children will suffer for bread, as well as for shelter.

On the other hand, it will mean on the part of the coal operators no great sacrifice, because the coal business is greatly depressed. They have profiteered upon the American people and along with the display of vaunted "patriotism" in the trying days of the war they have extorted from the consumers of this country profits which attained the verge of actual dishonesty. Of all the conscienceless profiteers none have been more ruthless than those who charged extortionate prices for coal during 1920. From 1916 on have been the fattest years in the history of the coal business—the aggregate profits of the operators run literally into billions. They have fattened their bank accounts and have invested in Liberty bonds and other securities, and now when business is bad and they are not making any money anyway, they can well afford to shut down for a few months and take a turn at trying to destroy the miners' organization.

In the face of this appalling situation, or perhaps it may be because of the last fact I have just assigned, the administration now throws up its hands and confesses its helplessness. In yesterday's Washington Herald appears an inspired article, including an interview with Secretary of Commerce Hoover, in which he announces to the people of the United States that it is not the purpose of the administration to try to do anything whatsoever to avert the strike. I quote from that article:

FEARS STRIKE IN COAL FIELDS IS INEVITABLE—SECRETARY HOOVER SAYS ALL CONCILIATION HAS FAILED—OPERATORS WANT FINAL SHOW-DOWN.

Soft-coal miners and mine union leaders believe they have cause to call a gigantic strike on April 1 next unless granted a new and satisfactory wage agreement by the operators. But they hope the strike may be averted.

Administration officials hope the strike may be averted, but see no way now of averting it.

Coal operators would like to see the strike go into effect for a real "show-down."

These are the outstanding phases of a serious economic situation literally saturated with politics both within the American Federation of Labor and in the field of national parties, pregnant with suffering and business losses and charged with threats and counter threats involving the "open-shop" campaign, which has stirred labor.

FEARS STRIKE INEVITABLE.

That a strike would seem inevitable in the bituminous fields at the expiration of the miners' present national agreement, March 31, is the belief of Secretary Hoover. If the bituminous workers walk out, say labor leaders, the anthracite miners will follow them, throwing 500,000 men into the strike.

"There seems little possibility," Secretary Hoover said, "that any machinery might be set up to avoid the strike. The Government has taken no further steps to avoid the walkout. Unless something unforeseen occurs to adjust the difficulty, it seems that the stage is set for a strike."

The Government's position has long been known to be that sooner or later there would have to be a show-down in the mine fields. Its attitude is that if a strike must be, it must be, and the sooner the issue is disposed of the better.

Again I quote:

On the other hand, the miners' officials hold that some operators and other undefinable forces are slackening the industry to aid the alleged fight of finance for the open shop.

James Lord, chief of the mining division of the American Federation of Labor, puts it thus:

"What good would Government intervention do if the fight against organized labor is ignored?

"That issue is even beyond the living-wage question. Can a reduction in wages bring any increased employment when there isn't any employment?

"The miner's problem is not the only one. It is merely one typical product of the frenzy against the rising tide of organized labor."

ALL OFFERS FAIL.

Secretary Hoover, during the unemployment conference here last fall, attempted to effect an agreement in advance between coal operators and mine union officials to arbitrate the wage question. He was told by the miners' leaders that this could not be done.

President Lewis, of the United Mine Workers, sought to bring a conference, but called it off when some of the operators declined to participate.

So the situation stands just there. The Government sees nothing further to do. Union leaders see no possible hope in Government intervention because they hold that refusal of the operators to meet them means nothing but a fight against organized labor.

Meantime, the public may wonder what is to be done.

It is not merely for the incapacity of the administration that I complain. There is something more sinister. It is the smug complaceny with which Mr. Hoover says that no further effort will be made to avoid the strike.

What a strange contrast, what a shocking contrast, between the statements now made on behalf of the administration and the address which the President delivered in this Chamber only six weeks ago. Then he was for stopping strikes. Then he was for intervening with the strong arm of the law. Then he advocated industrial courts which would effectually prevent strikes. Now, it seems, he is willing for the struggle to come. He spoke in the abstract on December 6; the administration spoke in the particular on yesterday.

The administration is complacent toward the strike because it believes that it can come to but one end. Four millions of men are out of employment in the country. It will be easy to hire strike breakers. The miners have had slack work for many months; they have been barely able to exist; they have exhausted their slender reserves. They can carry on an effective labor struggle only with the greatest difficulty. It seems to the administration that they are bound to lose; that men who have no savings will be easy to starve into submission. The administration is complacent because the hard-hearted and arrogant coal operators are ready and want the strike to come on.

What a contrast between the exceeding tenderness of the administration toward the railroads. [Applause.] The transportation employees, engineers, conductors, and trainmen hold the key to transportation. These crafts were well organized. Their threatened strike meant possible success. They had a chance to win. No effort was spared on the part of the administration to prevent it. Public opinion was marshaled to drive the railroad workers back into submission. There was no strike. But it does not take the same high degree of skill to work about a coal mine. Plenty of men are out of work, practically starving, who are skilled enough to work around coal mines. The administration feels that it will not hurt the operators to have a great strike at this time; that the industry will not seriously suffer and that the strike will have just a single result—the destruction of the miners' organization. So that the administration is smugly and complacently lending itself to the "open-shop" crowd that aim at nothing less than the destruction of all labor organizations.

Now I yield to the gentleman from Maine.

Mr. HERSEY. I am interested to know, before you close your speech, whether you are going to develop a recommendation to the President of the United States as to how he is going to stop the strike on your advice?

Mr. HUDDLESTON. I could develop many——

Mr. HERSEY. Name one.

Mr. HUDDLESTON. Let him use the influence of the administration to get the operators to meet their employees to talk over their differences; that is the least that he can do. Why does not the President call a conference between the operators and the miners? It will place the blame for this strike so that the American people can see clearly where it belongs. Let them talk their troubles over in public. If they can not agree we will then see who is at fault.

Mr. HERSEY. The remedy is a labor conference, then?

Mr. HUDDLESTON. That is merely one remedy—the easiest one, the most obvious. This struggle has been coming on for months. Every man acquainted with the labor situation in this country and who knows nothing about the mining industry

knows that the operators have been waiting and watching and longing throughout the last two or three years for an opportunity to "go to the mat" with the miners' organization. A man who does not know that is not fit to be President nor Secretary of Commerce. Men who are well informed and know the animus of the operators know that they have been looking for this chance and that they welcome the occasion for a struggle with their employees now, as it seems to them the time is opportune. And the administration turns its thumbs down—"Do what you will; the Government of the United States will not intervene, either by the influence of the President or through the forms of law."

Mr. WALSH. Will the gentleman state when this agreement that expires in April was entered into?

Mr. HUDDLESTON. It is a continuation of a contract made during the war.

Mr. WALSH. And is it not a fact that there are a large number of coal miners who do not belong to an organization, and that are willing to continue to work?

Mr. HUDDLESTON. I do not know. I will say to the gentleman from Massachusetts that there are a large number of coal miners who are not permitted by their employers to belong to any kind of an organization. Their employers have the power and the tyrannical spirit to say to the men who work for them, "You shall not belong to a labor organization and continue to earn your bread in this community." With these men it is a choice of renouncing their membership in the organization or of starvation. What the administration is fixing for is to bring hundreds of communities in the United States into the condition of suffering and lawlessness existing in West Virginia, where a barbarous fight between the miners and their employers has been waged for the past two or three years.

Mr. WALSH. Mr. Chairman, will the gentleman permit a question?

Mr. HUDDLESTON. Certainly; any question.

Mr. WALSH. Is it not a fact that this agreement which expires in April was entered into after the strike which occurred in 1919, which was settled through the intervention of President Wilson?

Mr. HUDDLESTON. Oh, no——

Mr. WALSH. I think the gentleman is mistaken.

Mr. HUDDLESTON. Not "settled through the intervention of President Wilson." I respect Mr. Wilson. Let us not put that atrocity upon his shoulders. While the President was sick in his bed and unable to give the matter his attention, a member of his Cabinet took advantage of the situation and used the powers of the United States to throttle the strike; not to settle it, but to crush it. And in the same tyrannical spirit the strike which now threatens would be crushed if it was not believed by those in power that to let it run its course will mean the destruction of the miners' organization; that spirit is behind this complacency and this willingness for the strike to come on.

Mr. UPSHAW. Mr. Chairman, will the gentleman yield?

Mr. HUDDLESTON. Yes.

Mr. UPSHAW. Does the gentleman believe that if the President would take the initial step of calling a conference between the operators and the miners the effect would be composing and wholesome?

Mr. HUDDLESTON. The effect would be wholesome. Let me say to the gentleman from Georgia that I know coal operators pretty well. I have a lot of them in my own district. I know their spirit and disposition. Of course, some of them are good men. But I want to tell you that the dominant element among the coal operators is thoroughly un-American. They care little who may suffer so long as it is not themselves. Their consuming desire now is to go down to battle with their employees for the purpose of destroying the miners' organizations. I have grave doubts whether even the President of the United States, close as he is to those great interests, could by his intervention stop the strike. But I do say that common good will and loyalty to the public welfare and to his country demand that the President shall do all that in him lies to prevent this great catastrophe. [Applause.] I say that if the President allows this strike to come on without using his influence with these oppressive employers—without asking the intervention of Congress, without lifting his hand, without doing anything whatsoever—he will mark himself so that he will be known throughout the history of our country.

Mr. WALSH. Mr. Chairman, will the gentleman yield?

Mr. HUDDLESTON. Surely.

Mr. WALSH. Has the gentleman information to the effect that the supposed intervention of President Wilson in 1919——

Mr. HUDDLESTON. There was no "supposed intervention of President Wilson." There was the intervention of a Federal judge out in Indiana; there was the intervention of the Department of Justice for the intimidation of the miners. There was no intervention of President Wilson. The President was sick. Nobody can say that any influence was used except the might of the strong arm.

Mr. WALSH. The gentleman will recall that a conference was called in Washington at that time, supposed to be called by the President.

Mr. HUDDLESTON. In August, 1919, there was a conference held. It should be known as the "Gary conference," for the president of the Steel Corporation dominated it, and prevented the adoption of any program for peace in the industrial world. Gary thwarted its purpose, which was to adopt a program for peace between employers and wage earners in all lines of industry. [Applause.]

Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD.

The CHAIRMAN. The gentleman from Alabama asks unanimous consent to extend his remarks in the RECORD. Is there objection?

There was no objection.

The CHAIRMAN. The Clerk will read the bill for amendment.

The Clerk read as follows:

OFFICE OF THE PRESIDENT.

Salaries: Secretary, $7,500; executive clerk, $5,000; chief clerk, $4,000; appointment clerk, $3,500; record clerk, $2,500; expert stenographers—one $3,000, one $2,500; accounting and disbursing clerk, $2,500; two correspondents, at $2,500 each; clerks—two at $2,500 each, four at $2,000 each, seven of class 4, two of class 3, four of class 2, three of class 1; messengers—three at $900 each, three at $840 each; three laborers, at $720 each; in all, $80,880: *Provided*, That employees of the executive departments and other establishments of the executive branch of the Government may be detailed from time to time to the office of the President of the United States for such temporary assistance as may be necessary.

Mr. WALSH. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Massachusetts moves to strike out the last word.

Mr. WALSH. The gentleman from Alabama [Mr. HUDDLESTON] has devoted some time to the discussion of the pending situation in the coal-mining industry, and seeks to take to task the President of the United States and the administration for not doing something to relieve and remedy conditions.

As a matter of fact, I think the gentleman will find that an agreement was entered into between the operators and the coal employees in 1919 as the result of a conference being held here in an attempt to adjust difficulties, and a situation that was threatening then somewhat similar to that which the gentleman says is pending now. I wonder if the gentleman is recommending to the President of the United States to take the same steps that his predecessor in office took when he came before Congress and demanded that we pass the Adamson law, which was put upon the statute books, and which is at the basis of most of the troubles that confront the railroads of the country to-day, notwithstanding that later we provided the Railroad Wage Board for adjusting difficulties which arose between the railroad managers and owners and their employees. At that time we were told that we would be asked for further legislation to alleviate certain other conditions arising out of transportation problems.

The fact is that this coal dispute which is threatening is a serious question, but as yet there is no indication that there is need for the strong arm of the law to be placed either upon the operators or upon those who are working for them. In many States of the country there is a large number of coal miners who are willing to return to work, who are willing to accept the pay that is offered to them, but who have been prevented because the leaders and officers and managers of certain organizations that have within their control vast numbers of aliens who have been taken into these unions will not permit them to do so in peace; and while it may result in some discomfort and in some suffering until there has been an utter failure on the part of these men to agree and on the part of the operators and the miners to come to some understanding whereby this agreement which was entered into might be renewed or some other contract or agreement might be entered upon, I submit that there is no occasion for the distinguished gentleman from Alabama to rise and condemn the administration or the President, because the gentleman well knows that the people who toil in this country have no better friend than the present administration or the present Chief Executive of the United States.

And if their problems are brought here to this House they will find that upon the majority side and upon the minority side they will give respectful attention and that whatever relief or remedy is required will be afforded them. The gentleman from Alabama [Mr. HUDDLESTON] has become a spokesman

for the minority side whenever questions affecting organized labor arise. They have their spokesmen upon this side, and we must remember that organized labor, powerful as it is, has men of influence holding positions under high salaries, who are not recreant to the trust imposed in them and who do not let slip any opportunity to bring to the attention of the American people and of legislative bodies, both this Congress and the State legislatures, questions for which they demand solution. When they are right, their demands will be acceded to, and once in a while they are right; but they certainly were not right when they succeeded in holding a gun at the head of Congress in 1916 and put through that measure which has been called the Adamson law. [Applause.]

Mr. HUDDLESTON. Mr. Chairman, I have heard a lot of silly talk on this floor about the labor leaders being eager for strikes, that they always use their influence for strikes. There never was a sillier thing said in this or any other body. The real fact is that the labor leader is always the most conservative member of his organization. I will not take the time to tell why that is so, but it is a fact known to all men who know anything about the subject.

It is also a fact that for a time there has been dissension in the ranks of the United Mine Workers. That dissension grows out of the fact that their president, John Lewis, is more conservative than many of the men that he is supposed to lead. That is really the origin and the root of the trouble. I do not take any side in this dissension. It is not a matter that I feel free to speak upon, except to say that the troubles which Mr. Lewis has in holding his leadership lies in the fact that he holds to more moderate and conservative views than a substantial and important element of the membership of his organization.

And let me say this further to the gentleman from Massachusetts [Mr. WALSH], that Mr. Lewis, just as every other real labor leader, leads merely because he is pushed on by those whom he represents. No labor leader will ask more than his members want him to ask—many leaders ask much less and so soon cease to be leaders. There will be no strike unless the plain coal diggers want that strike. They are the men who will force action. They are the men who move their organization into activity.

The matter involved in the threatened strike is not, as the gentleman seems to believe, a question of wages, nor is it a matter of labor conditions. It is the life of the miners' organization. The proposition is not merely to reduce wages. That is not what the fight is about. The operators refuse to negotiate with the organization. They want to destroy it; they want to take away the miners' only means of protection. That is the trouble. The real purpose of the operators, now that they have got the mine workers on the hip, due to the depression in the industry, due to the thousands of men being out of employment who will be available as strike breakers, now that this is their golden hour, their purpose is to destroy, once and for all, the mine workers' organization. I ask the gentleman from Massachusetts, does he sympathize with that purpose?

The President the friend of the workingman! The present administration the friend of the men who work! How does he prove it? What has he done for the men who toil? How has he demonstrated that he is their friend and that he is interested in their concerns? Has he demonstrated it by proposing here in his address on December 6 measures designed to throttle them and to render their organizations ineffective? Is that the great thing that he has done for them? Did he show himself their friend by putting the machinery of the Government into motion to suppress the threatened railroad strike—to suppress it not in the interest of the public, not in the interest of the workers, but in behalf of the railroad managers and financiers, who feared that there was a chance for the workers to win in a strike? How has the President proven that he is the workers' friend? Heaven save them from such friends!

The President has a splendid opportunity now in front of him. If the President be the friend of labor, let him use a little of his influence as President of this great Nation to get the coal operators to talk to their employees about making another contract. Ought not a contract to be made? Every man will admit that it ought to be made, every man who is fair. Why does not the President try to get these friends of his, these big business men, these profiteers, these people who furnished the money and the brains to put him in there as President—why does he not use his influence with them to get them to talk with these humble, hard-handed men who dig the coal out of the ground miles away from the daylight?

The CHAIRMAN. The time of the gentleman has expired. Without objection, the pro forma amendment will be withdrawn and the Clerk will read.

The Clerk read as follows:

For ordinary care, repair, and refurnishing of Executive Mansion, to be expended by contract or otherwise, as the President may determine, $50,000.

Mr. BLACK. Mr. Chairman, in line 10, page 3, after the word "determine," I move to strike out the figures "$50,000," and insert the figures "$35,000."

The CHAIRMAN. The gentleman from Texas offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. BLACK: Page 3, line 10, after the word "determine," strike out the figures "$50,000" and insert in lieu thereof the figures "$35,000."

Mr. BLACK. Mr. Chairman, on page 3 of the hearings on this independent offices appropriation bill I find the following testimony with reference to this particular item now under consideration:

Mr. WOOD. For a long while the annual appropriation for the ordinary care, repair, and refurnishing of the Executive Mansion was $35,000.

Col. SHERRILL. Yes, sir.

Mr. WOOD. For 1916, 1917, and 1918 it was $35,000, and then the amount jumped to $50,000.

Col. SHERRILL. That is largely due to the increased cost of both materials and labor. This is indicated in the different rates paid to mechanics, laborers, and for most of the supplies used there. I have a table showing how those rates have changed.

Now, Mr. Chairman, we find that for many years the appropriation was $35,000, and up to 1918 it was $35,000. For 1919, 1920, and 1921, and the present fiscal year 1922, it has been $50,000. I think it is time we were getting back to the ordinary rate of expenditures on these different matters, and if we ever get back we have got to make a starting place. Looks to me like now is a good time to begin it. I recently visited my congressional district, and I found the people hopeful and optimistic and striving to overcome the difficulties of the present industrial and business depression, but I also found that they are all thoroughly convinced that it is getting high time that the municipal governments, the State governments, and the Federal Government practice the same kind of formula that we recommend to them, to-wit, to work and save. The people are right. It is getting time that the Federal Government should practice actual economy. I do not state this from any sort of partisan standpoint, and do not propose this amendment at this particular time merely because the present occupant of the White House happens to be of a different political faith from the party to which I belong. I propose it because the record shows that for many years the appropriation was $35,000 and was ample for all purposes, and because I believe that the White House can still be adequately maintained with $35,000.

Mr. LAYTON. Will the gentleman yield?

Mr. BLACK. Yes.

Mr. LAYTON. If we cut the amount down from $50,000 to $35,000, is not it really a strike at labor?

Mr. BLACK. No; I do not think that any reasonable economy that we can make is a strike at labor. I do not know of anything that would be of greater benefit to labor, to business, and to farming than a substantial reduction in the burdens of taxation. If we ever get it, we must begin paring appropriations to the bone.

Mr. WOOD of Indiana. Mr. Chairman, I rise in opposition to the amendment. We examined particularly into this item, and the same gentleman now in charge of the public buildings and grounds that was in charge during the last days of President Wilson's administration called our attention to the fact, and it was impressive that during the last month of Mr. Wilson's administration, because of his illness, the White House was closed. It was in need of repairs then, but in order that there might not be any disturbance to the President when he was ill the repairs were not made. Immediately after the advent of the present administration the public grounds were thrown open and the White House was thrown open, and from that time to this goodly hour there have been thousands of people going through there every day. Every time they go through there is more or less wear and tear. They are not as thoughtful as they should be for the privilege of going through, and there is much useless destruction of property. In order that the building may be put in the condition that it should have been during the last days of President Wilson's administration and in order that it may be properly protected it was thought wise to make an appropriation of $50,000, with the hope that with the added improvement it may be reduced next year. The committee wants to economize and retrench as much as possible, and I believe our reputation points truthfully to that assertion. On the other hand, we are equally interested in seeing that the public property is properly maintained and repairs

made when it is necessary to preserve the property as it should be.

Mr. BLACK. Will the gentleman yield?

Mr. WOOD of Indiana. Certainly.

Mr. BLACK. This $50,000 would apply for the fiscal year 1923. As I understand, they have $50,000 for the rest of the fiscal year.

Mr. WOOD of Indiana. Yes; but in their opinion that is not enough. We felt that it was warranted, and I trust that the amendment of the gentleman will not be adopted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas.

The question was taken, and the amendment was rejected.

The Clerk read as follows:

For improvement and maintenance of Executive Mansion grounds (within iron fence), $10,000.

Mr. BLACK. Mr. Chairman, I move to amend, on line 19, page 3, by striking out the figures $10,000 and inserting $5,000.

The CHAIRMAN. The Clerk will report the amendment.

The Clerk read as follows:

Page 3, line 19, strike out the figures $10,000 and insert in lieu thereof $5,000.

Mr. BLACK. Mr. Chairman, this item of $10,000 for improvement and maintenance of Executve Mansion grounds is an actual increase of $5,000 for the same item over the appropriation for the present fiscal year. The appropriation for the present fiscal year is—

for improvement and maintenance of the Executive Mansion grounds within the iron fence, $5,000.

This bill proposes to increase that 100 per cent and make it $10,000.

Mr. GRAHAM of Illinois. Perhaps the additional damage was caused by the sheep. [Laughter.]

Mr. BLACK. Well, of course, my friend from Illinois is speaking facetiously. I admit that these items are small, but I am proposing the amendments in all seriousness. I believe we should be economical in the small items as well as the large ones. I am determined, for my own part, that whenever an item in this bill or in any other bill which may come before the House carries an increase in a given appropriation, unless some real substantial reason can be given for it, I propose to oppose such increase whether I get successful support or not. Our amiable President in the campaign of 1920 used as his slogan that it was time to get "back to normalcy," and I say so, too. But in the matter of economy our Republican brethren are not getting back to it very fast, as such items as this so forcibly attest.

If any man will go among the people of the United States—the business men, the bankers, the farmers, the laboring men—and learn at first hand the difficulties and the hardships under which they are laboring, he will conclude that it is really time to reduce unnecessary expenses, and thereby enable a reduction of taxation. Every item in these appropriation bills should be most carefully scanned, and wherever reductions can be fairly made, even if it is not but $5,000, it should be done.

That is all I wish to say. Of course, it is up to the House as to whether it will adopt my amendment and save $5,000 or defeat it and spend $5,000 more for this particular item than is being spent during the present fiscal year.

I hope my amendment will be adopted and the money saved.

Mr. WOOD of Indiana. The gentleman from Texas [Mr. BLACK] is right in raising the objection that he has to this item, and unless there is justification for it it should not be allowed. The justification we have, I think, is worth while and well merited. The grounds have had but little attention in the last five or six years. Many of those old giant trees are dead and some of them are dying. Many of them need immediate attention in order to preserve them by proper tree dentistry and otherwise. Some of them must be taken out. Some kind of peculiar disease attacked the trees in the White House grounds. Somebody suggested to President Wilson that it could be cured by putting in sheep. He put in the sheep, but that did not seem to cure the disease, however. The sheep ate up all of the shrubbery there was that was get-at-able, and that has also made necessary some of this item of expense. In order that the proper fertilization may be had for those grounds, in order that these trees may be attended to as they should be, and in order that the hedges destroyed by those sheep may be replaced and rebuilt, it is essential that this additional $5,000 be allowed. That is the only excuse for it, and we think it is well warranted.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Texas.

The amendment was rejected.

Mr. LONDON. Mr. Chairman, I move to strike out the last word for the purpose of calling the attention of the Congress to a rather interesting incident. On the 8th day of January the President commuted the sentence of a manufacturer who had been found guilty of a violation of the antitrust act. With a great deal of blowing of trumpets the district attorney announced the first triumph of the people, the first case of a prison sentence for violators of the antitrust act. I am not protesting against the commutation of the sentence. The sentence was only for four months. I applaud every impulse of humanity which relieves a man in distress. Nor am I revengeful, nor do I hate the rich, nor would I like to send them to jail. As a matter of fact, I am opposed to the so-called antitrust legislation. It is a farce. Every time the court ordered the dissolution of a trust the stock of the trust rose in value. It is absurd to punish a man because he has succeeded over his competitor.

The final object of competition is to eliminate all rivals and to triumph by removing opposition. Unless the methods employed are dishonest, it is silly to brand as a criminal the successful competitor. Modern industry and modern commerce require concentration, efficient cooperation, and coordination of capital. The punishing of a business man because he had succeeded in getting owners of capital to cooperate and to eliminate competitors runs counter to the law of economic evolution.

What I do deplore is that the administration, which has found it necessary to reduce a four months' sentence of a rich manufacturer by three months, at the same time keeps in jail the victims of war hysteria, many of whom have been sentenced to 10, 15, or 20 years for delivering an address, for expressing an opinion, for trying to tell a story, or presenting a viewpoint that was unpopular. Is it because their views are considered antagonistic to capital? Is it because they have been preaching the necessity of cooperation among the workers?

Mr. JOHNSON of Mississippi. In what respect had this manufacturer violated the law?

Mr. LONDON. This particular manufacturer violated the antitrust act, as far as I am informed, by helping to form a combination which culminated in the stifling of competition in the tile industry. His conviction, along with the conviction of three other manufacturers in the Federal court, resulted after a very thorough investigation made in connection with the evils of the building industry in the city of New York. Those labor men who happened to be caught in the net of law were sentenced to long terms of imprisonment, and are still in jail. Nobody thought of commuting their sentence. I am protesting against the continued imprisonment of 118 political offenders. They released Debs because the name of Debs attracted millions of men and women. Debs is a great figure; Debs was a candidate for the Presidency; but I am as much interested in the plain man who is in jail, in the fellow who distributed a circular and got himself sent to prison for 10 years because some fool of a reactionary judge was anxious to intimidate all dissenters. These unheard-of sentences can be explained only by the excitement and the stress of war. There is no earthly excuse for keeping the political offenders in jail, and there are 118 of them.

The Clerk read as follows:

For lighting the Executive Mansion, grounds, and greenhouses, including all necessary expenses of installation, maintenance, and repair, $8,600.

Mr. COOPER of Wisconsin. Mr. Chairman, has the gentleman from Indiana considered the advisability of changing that expression "Executive Mansion" to "White House"? All official communications from a number of Presidents have been dated "The White House," and they are all now dated the "White House" when sent from there.

Mr. WOOD of Indiana. I do not think we would have any right to do it. Somebody called that to our attention a year or two ago. The building is referred to in the act authorizing the erection of it as "The Executive Mansion."

Mr. COOPER of Wisconsin. Then it would be a change of existing law.

Mr. WOOD of Indiana. Yes; that is the point.

The Clerk read as follows:

ALIEN PROPERTY CUSTODIAN.

For expenses of the Alien Property Custodian authorized by the act entitled "An act to define, regulate, and punish trading with the enemy, and for other purposes," approved October 6, 1917, as amended, including personal and other services and rental of quarters in the District of Columbia and elsewhere, per diem allowances in lieu of subsistence not exceeding $4, traveling expenses, printing and binding, law books, books of reference and periodicals, supplies and equipment, and maintenance, repair, and operation of motor-propelled passenger-carrying vehicles, $370,000: *Provided*, That this appropriation shall not be available for rent of buildings in the District of Columbia if suitable space is provided by the Public Buildings Commission.

Mr. GREEN of Iowa. Mr. Chairman, I move to strike out the last word, in order to inquire of the gentleman from In-

diana why, if we are short of needed office room here, perfectly good buildings on the Mall are being pulled down?

Mr. WOOD of Indiana. The only reason that the buildings near the Mall were pulled down is because they were very temporary buildings. The only buildings pulled down were those of a very temporary character, and the reason they were destroyed was because of the fact that it was felt that they could better protect the other buildings by getting rid of these. They were of the cheapest manufacture. That is the excuse given for doing it. As far as the other space is concerned, I have but a limited knowledge about it, but it seems they are trying as best they can now to get these activities that are only temporary in nature into these so-called temporary buildings as fast as they can, and they have been doing considerable work in that direction.

Mr. GREEN of Iowa. The gentleman, I have no doubt, is correct in what he says about the nature of the buildings. I was not aware that there was any difference in the construction of the buildings on the Mall. I was aware that some of those buildings are very well constructed.

Mr. WOOD of Indiana. There was quite a difference. I am not able to tell the gentleman the technical difference, but there was quite a difference in the construction of them. Some of them were of the cheapest possible character, and some of them were more or less permanent in construction.

The gentleman will recall that during the time appropriations were being made for the erection of these temporary buildings, it was estimated it would take 10 years after the war was over to wind up the business that was incident to the war, and during that portion of time more or less of these temporary buildings would be needed, and that they should be built in proportion to that necessity, with the idea of taking them down in proportion. The Navy Building and the Army Building down in the Mall are permanent in their character, and I expect will stand for ages, and it was because of that fact that they were made permanent, and some of those that were built, even after the first lot of temporary, were more temporary in their construction than the others. And those of that nature have been torn down first.

Mr. GREEN of Iowa. I would like to inquire a little further in regard to this lump sum of $370,000 that was appropriated. What is the reason the gentleman could not find any way of segregating the items that go into this sum?

Mr. WOOD of Indiana. Because of the fact that there has been a lump-sum appropriation from the beginning and the business is such that while we asked allocation be made for the various parts of it, it consists of so many items that it would be practically impossible for us to proportion it ourselves. The gentleman will understand that there are some 37 trusts in the hands of this Alien Property Custodian. And as I advocated in the speech I made here the other day, some steps should be taken by the proper committee at the earliest moment to wind up this whole affair. There is no reason on earth, in my opinion, why it should be longer continued.

Mr. GREEN of Iowa. I agree with the gentleman's desire, and I hope the Appropriation Committee will use some pressure in that connection, if possible.

Mr. WOOD of Indiana. There is one bill that I know of—and I think possibly two—that have been introduced for this purpose, providing the character or means by which it can be wound up, and it is now in the hands of the Commerce Committee, and I think we can render a splendid service by getting early action on this proposition.

Mr. MANN. If the gentleman will permit, I think there will shortly be presented to Congress, probably, some recommendations on this subject, which probably would have been presented before except for the peace conference in Washington. Of course, it involves our foreign relations in some respects, and I think those who have to deal with the subject have not had very much time in recent months. I have been told it is the expectation before very long that information and recommendations would be presented to Congress with the idea of closing up most of the work of the Alien Property Custodian.

Mr. GREEN of Iowa. Do I understand the gentleman from Illinois that we are waiting on the State Department, then?

Mr. MANN. Well, I prefer not to make a definite statement on the subject.

Mr. GREEN of Iowa. As I was about to state, Mr. Chairman, in line with what the gentleman from Indiana [Mr. WOOD] has said, I think this whole department ought to be closed out, and closed out speedily. There is certain property held by the Alien Property Custodian at this time that ought to pass out of his hands and into the hands of the original owners, and yet, as the law now stands, there is no way of doing anything with it except for him to retain it. And, in addition, this bureau costs $370,000, and we do not know how much of that is for attorneys' fees or salaries, as far as the bill is concerned.

The CHAIRMAN. The time of the gentleman has expired.

Mr. BRIGGS. Mr. Chairman, I ask unanimous consent that the gentleman may have two additional minutes.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. BRIGGS. I want to ask the chairman of the subcommittee if there is not a great deal of available space in these permanent buildings in Potomac Park that could be utilized as quarters for the Alien Property Custodian instead of paying for this expensive building on Sixteenth Street that he now occupies?

Mr. WOOD of Indiana. I am informed that there is not. The Alien Property custodian is not the one. We could better keep the building that he is now occupying than some others. I am not chairman of the committee disposing of public space, but we have made some inquiries about the matter, and I am advised that the committee having this in charge is using its best endeavors to get Government offices into Government-owned buildings.

Mr. BRIGGS. Has the committee any information as to how much space is used by the various offices here?

Mr. WOOD of Indiana. That information is available to any Member of Congress. We inquired into it as many times as we could as far as our committee is concerned, and we encourage their getting out of these temporary buildings into other temporary buildings. We are paying many hundreds of thousands of dollars less this year than last year because of this very thing.

Mr. JOHNSON of Mississippi. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I find from the hearings had on this bill that the Custodian of Alien Property has leased on the most exclusive street in the city of Washington, Sixteenth Street, one of the most exclusive apartment houses for offices for this bureau; that they have employed 26 lawyers, according to a statement from the chairman of the committee, at salaries of $4,500 each per year. The custodian asks for an appropriation of $375,000, to be spent in managing the affairs of this bureau. One hundred and sixty-four people are employed in this department. In addition to the 26 attorneys mentioned, there is employed a general counsel, an associate counsel, and one special litigation counsel, a former Congressman, Mr. William W. Wilson. All of these gentleman are drawing $6,000 each per year. An editorial clerk is drawing an unreasonable salary for his imaginary services, and a large number of others are drawing big salaries which I would like to discuss, but in my limited time I can not.

Mr. Chairman, this bureau was created during the war, and no one ever dreamed that it would be continued after peace was declared. There is absolutely no use for it. It only furnishes soft jobs for political pets. We were promised last year by this administration that this bureau would be abolished, and all those unnecessary employees would be discharged, but to-day the expense is just as great as it was then, and the prospects for a continuation of those easy berths for those gentlemen is no doubt encouraging to them.

But, Mr. Chairman, I want to talk some about the United States Shipping Board. The Government of the United States has spent about $4,000,000,000 on this board. Much of it was spent at a time when waste could not be easily avoided, but more of it was spent after the armistice when waste and extravagance could easily have been avoided. Last August, I remember very well, the chairman of the committee having in charge the appropriation, deficiency appropriation bill, gave this Congress to understand that the Shipping Board should be done away with, the ships disposed of, and all those employees should be discharged from the Government pay roll. Mr. WOOD of Indiana, who is chairman of the subcommittee having the present bill under control, made a lengthy speech at the time Chairman MADDEN reported the deficiency bill last August, in which he made the charge that graft and corruption permeated the organization. He said that nothing in all history compared with this Shipping Board for waste and corruption, and he urged that something be done to correct the awful abuses practiced by that organization. It has now been six months since he made his speech. At that time he was asking for $125,000,000, for money that had already been spent by this board in excess of the amount allowed it. This Congress—but not with my vote—gave the board the $125,000,000, every cent of which has been squandered, and it is here to-day asking for $105,000,000 more in addition to some other large items amounting to a very large sum. I do not have the figures at hand just now,

but the sum is very large. It proposes to spend this money in operating and conducting the business of the Shipping Board which, admitted its chairman, Mr. Lasker, in testifying before the committee, is losing more than $4,000,000 per month. On page 951 of the hearings Mr. Lasker said:

It will never become paying.

And yet, with this information before this Congress, you are seriously considering and no doubt will permit this organization to put its hands into the Treasury of the United States and waste all the vast sums that are asked in this bill.

Let us see what is going to be done with this money. There are 78 lawyers already employed. A large number of them were employed this last fall at fabulous salaries. This bill proposes to permit this board to employ seven additional attorneys at salaries of $11,000 each per year. It proposes to create a new commission consisting of seven members whose salaries shall be $12,000 each per year, with a secretary whose salary shall be $5,000. This commission is to sit in judgment on claims propounded against the United States.

Now, let us see something about the lawyers employed. For instance, a man by the name of Gendron, whose salary was $1,000 a year, has been by this board increased to $6,000 per year; Henry P. Anewalt, whose salary has been raised from $1,500 to $4,800; Benjamin Y. Martin, whose salary has been raised from $1,500 to $4,200; Allan McLain, whose salary was increased from $1,200 to $4,800; James R. Frase, an attorney, was employed at $7,500; he was let out and hired over at $10,000. Many others that I have not time to mention have been increased proportionately. Mr. Small is paid $35,000 a year. Mr. Frey had his salary raised from $8,500 to $10,000. He said he quit a $25,000 job to take this job, and he says he feels he can go back to a $50,000 a year position, but that he is so valuable to this organization that the board will not let him go. Mr. Lasker says that Mr. Frey had an offer of $60,000 per year recently to go into the steamship business; yet this peace-time patriot, who cares nothing for money, although admits he is not a very wealthy man, holds on to the Shipping Board. Next we have Mr. Powell, who says he made $300,000 from one corporation, the Bethlehem Shipbuilding Corporation, just before he came to this board, and he is now working for the United States Government for a salary of $12 per year, $1 per month. Mr. Powell left the Bethlehem Shipbuilding Corporation, that has millions of dollars' worth of claims against the United States unadjudicated at this time. He brought with him a number of Bethlehem Shipbuilding Corporation employees, who are working with this board at this time, yet he says he has no interest in the shipbuilding company and is prompted solely by patriotism to work a whole year for $12, but finally admits that he has a contract with the Bethlehem Shipbuilding Corporation, and if certain claims of the company against the Government are adjusted that he could not make more than $5,000 or $10,000. No doubt this patriotic gentleman would refuse to have $5,000 or $10,000 if offered to him. He just naturally does not like Uncle Sam's money. He wants to work for nothing. I think the people of the United States have been gorged on these dollar-a-year patriots, and so far as I am concerned I am in favor of getting rid of all of them. I believe the Treasury of the United States will be safer in the hands of the men who are willing to accept a salary for services rendered.

There are a large number of attorneys drawing $8,000 or $10,000 and upward, in addition to the $5 subsistence per day allowed them by the Government. We have men on this pay roll drawing $35,000 per year, but why should I discuss this further? Any intelligent man in this House can read the hearings and be convinced that the whole thing is a colossal fraud and steal from the Government. Why, we even have a man by the name of Bull, who was employed by this board at $6,500 per year, but it became necessary to send him off on business and he was given $10,800 while away to cover his traveling expenses. No doubt his name—Bull—was very valuable to the board on this occasion.

On page 935 we find that it is proposed by this Shipping Board to spend $900,000 of the people's money to advertise for business for the Shipping Board. Of course, this advertising will be given by Mr. Lasker, who is an advertising man and who owned advertising interests before he came to the Shipping Board, to friends of the Republican Party. It will be to reward them for what they did in the last campaign and to stimulate them in their efforts next November. This dirty scheme ought to be stopped. Every good Democrat and Republican in this House ought to rebel against such a bold attempt to rob the Treasury.

The night before Abraham Lincoln was assassinated he was called upon by his friend, Mr. Amunson, to appoint a commission to consider certain claims Mr. Amunson had against the Government. Mr. Lincoln said:

Amunson, I am done with commissions. I believe they are contrivances to cheat the Government.

And so, Mr. Chairman, I believe a hundred million people in the United States share the opinion expressed by Mr. Lincoln that most commissions do not faithfully serve the people of the United States but represent selfish interests. Of course, there are some commissions no doubt that are absolutely honest, but you will find in the Shipping Board, gentlemen, that it is an organization filled with graft and reeking with corruption. Its operation is the most prodigal and shameful waste and extravagance of the taxpayers' money that was ever tolerated in the United States. It would disgrace hell in its palmiest days.

It is shown that ships leaving ports of the United States for foreign ports, having been furnished with supplies for the voyage, have had these supplies thrown overboard in order that additional purchases could be made for the ships in foreign ports, thereby enabling the purchasers to graft on the Government. This is almost unbelievable, but nevertheless it is shown to be true.

It has been shown that the Shipping Board has gone out into the open market and bought anchors for ships when in the warehouses of the board there were hundreds of anchors that could have been used. In one instance the Shipping Board bought an anchor for 6 cents a pound and the company from which the Shipping Board purchased it paid 1 cent a pound for the same anchor, and it was bought from the warehouse of the United States Shipping Board.

Men who have been working for the Shipping Board for small sums, for supposedly patriotic reasons, are to-day immensely wealthy and have gone into other businesses. There are many connected with it now who are just as guilty of such corruption, and yet this administration retains them.

We have been promised economy and the people of the United States were promised economy and retrenchment by this administration. Where is your economy? You have increased appropriations hundreds and hundreds of millions of dollars since you have gone in.

Mr. MADDEN. Mr. Chairman, will the gentleman yield?

Mr. JOHNSON of Mississippi. Yes.

Mr. MADDEN. I wish the gentleman would specify.

Mr. JOHNSON of Mississippi. From the beginning of this bill to the end you have increased appropriations. You have increased the appropriation for the President's Mansion and grounds around the White House from $35,000 to $50,000. You have created soft jobs for seven new lawyers at $11,000 each per year and seven commissioners at $12,000 each per year for the Shipping Board; you have provided for 200 additional employees for the Civil Service Commission; you have increased the subsistence fees from $4 to $5 per day; you do not put any limitations at all on the expenditures in several places in this bill, but leave it open for those who disburse the money to increase salaries and waste the money just as they see fit. You leave it to Mr. Lasker, the politician advertiser, who is to spend the $105,000,000 that you are asking the American people to give him. I know you are going to do it. I know you Republicans, who are in the majority, are going to vote for it. Many of the Republicans can not help themselves because they are hog tied. Many of them will vote for this bill feeling in their hearts that they are doing wrong and voting against the interests of the oppressed taxpayers of this country, but political pressure will force them to do it.

Mr. Chairman, there have been several conferences held at the request of the President supposedly to help the farmers and workers of this country. There will be another conference held here next week, supposedly to correct some of the abuses practiced against the farmers of the country, but nothing will come of it except they will get their pictures made with the President of the United States, get a clever handshake and be told that they should go back home, work harder, save their money, and bring the country back to "normalcy."

Why does not this Congress provide for the establishment of a farm-credits department in each farm loan bank? Why does not this Congress reduce freight rates? Why does not this Congress dispose of Muscle Shoals to Henry Ford or some one else who will develop it and aid the farmers, thereby helping the whole country?

Mr. Chairman, there is nothing constructive being done by this Congress. We are wasting the taxes faster than the people can pay them into the Treasury. It ought to be stopped. This country can never return to a normal condition unless the prodigality and waste in governmental affairs is stopped.

There is a small section of this country that dominates all the other. This Congress is dominated by a small body of men who live in the East. Most of the money of this Nation has found its way into the East, into the hands of a very few men. These men exert great influence at this Capitol. Mr. Chairman, I fear the baneful influence of the money power. No legislation that will hurt the money power and make it carry its just share of the burdens of government can be passed. I do not fear that the people of this country, if they ever learn the true conditions that exist, will not correct the evil, but how are they to learn it? The same power that I mentioned a few moments ago prevents them from gaining the information as to how things are run up here, but in so far as I am concerned I propose to tell it as it is. You are creating unnecessary offices, paying fabulous salaries, and paying political debts with these offices. It ought to be stopped and will some day be stopped, for the people are going to hold you responsible for it.

The gentleman from Ohio [Mr. FESS] said a few days ago in Baltimore, speaking of the Republican Members who have not been voting with the regulars of the Republican Party, that those who "got off the reservation" will get no campaign funds this fall. Mr. FESS is the man through whom the funds will be spent. He is chairman of the Republican congressional campaign committee. There are many of the Congressmen here on that side who want to vote for the interests of the people, but the old guard reactionary forces are absolutely in control of this Congress, and you know, and no one knows it better than the gentleman from Chicago. [Applause.]

Mr. Chairman, I do not fear that my Government will ever be destroyed by forces from without. I do not fear that any foreign Government can ever come to the shores of America and destroy this Government of ours, but the thing that concerns me and every thinking man of this country is the baneful influence of the money power. The giant oak in the forest that has withstood for hundreds of years every storm and to the casual observer appears almost indestructible, can be destroyed by unseen insects that gnaw into the vitals of the giant oak. So it is, Mr. Chairman, with this great Government with its 107,000,000 people, the richest Government on earth, the most intelligent people. It would seem almost indestructible, but this invisible government that is sapping the very life of our Government by its clandestine methods has become a cancer on the very heart of this Nation, and as sure as we live, unless something is done to stop it, this Government of ours will pass like Rome did when the Prætorian Guards offered her upon the auction block.

The CHAIRMAN. The time of the gentleman from Mississippi has expired.

Mr. MADDEN. Mr. Chairman, I rise to oppose the amendment.

The CHAIRMAN. The gentleman from Illinois moves to strike out the last two words.

Mr. MADDEN. I would like to put just a few facts into the gentleman's speech. [Laughter.]

Mr. JOHNSON of Mississippi. I have no objection if the gentleman lets me revise what he puts in. [Laughter.]

Mr. MADDEN. The gentleman makes a lot of charges about putting hundreds of millions of dollars onto the expenses of the Shipping Board. Of course, there is no accuracy in that statement. He knows that. I will give him a few facts.

In the first place, notwithstanding the charge that he makes to the effect that a good many attorneys have been employed, that high salaries have been paid, the number of employees of the Shipping Board since last August has been reduced from 8,324 to 5,035, or a reduction of 3,289, with a pay roll on June 15 of $15,861,400 reduced to $10,919,081, or by $4,942,319. That is a reduction of 39 per cent in the cost of administration.

Mr. JOHNSON of Mississippi. Mr. Chairman, will the gentleman yield?

Mr. MADDEN. Yes.

Mr. JOHNSON of Mississippi. How much do you appropriate this year?

Mr. MADDEN. If we appropriate what is in this bill, it will be $100,000,000.

Mr. JOHNSON of Mississippi. Is it not indefinite? Can anybody tell?

Mr. MADDEN. No; it is not indefinite. It is absolutely definite. If we appropriate what is in this bill, it will be $100,000,000.

Mr. JOHNSON of Mississippi. Can anyone tell how much is going to be spent yet?

Mr. MADDEN. Yes; you can not spend more than $100,000,000, and $50,000,000 of that can not be spent in any way but in operation, and the other $50,000,000 proposed to be appropriated is to pay claims that have been filed against the board for bad management under previous administration.

Mr. TILLMAN. Mr. Chairman, will the gentleman yield?

Mr. JOHNSON of Mississippi. Will the gentleman yield right there?

Mr. MADDEN. Yes.

Mr. JOHNSON of Mississippi. You say they can not spend any more than the amount appropriated. I want to ask the gentleman if the gentleman did not bring in a deficiency bill on the 10th of August last for $61,855,633?

Mr. MADDEN. What was appropriated was $48,500,000.

Mr. JOHNSON of Mississippi. Not one cent of that has been brought back here. If you appropriated a billion dollars, they would waste it all.

Mr. MADDEN. Of course, the gentleman's statement is not in accord with the facts.

Mr. BYRNS of Tennessee. Of course, the gentleman will agree that the appropriation for the Shipping Board next year is not limited to the $100,000,000, because this bill gives them the right to use the receipts arising from operation.

Mr. MADDEN. I say the $50,000,000 appropriated in this bill, if it is appropriated, is appropriated in anticipation of the needs of the service over and above the income from the service. Of course, we might as well be frank about that. That is the truth.

Mr. BYRNES of South Carolina. The truth about it is that Mr. Lasker has expended $300,000,000.

Mr. MADDEN. As to what they will spend from operation, you can not tell what that will be.

Mr. JOHNSON of Mississippi. I notice from the hearings that Mr. Lasker says he can not tell how much money it will take. He would like to have $50,000,000, but he can not tell.

Mr. MADDEN. There is one thing that Mr. Lasker has done, however, and that is he has reduced the annual losses of the past of $200,000,000 to $48,000,000 per annum.

Mr. GREEN of Iowa. Mr. Chairman, will the gentleman yield?

Mr. MADDEN. Yes.

Mr. GREEN of Iowa. The gentleman from Mississippi claims that we have retained many of these former employees who caused the waste. I am perfectly willing for my part to admit that we have not thrown out as many Democrats as we ought to have.

MESSAGE FROM THE SENATE.

The committee informally rose; and Mr. DOWELL having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. Craven, its Chief Clerk, announced that the Senate had passed without amendment the bill (H. R. 7601) to amend an act incorporating Prospect Hill Cemetery, and for other purposes.

INDEPENDENT OFFICES APPROPRIATION BILL.

The committee resumed its session.

Mr. WOOD of Indiana. Mr. Chairman, I can not let pass without reply the statements which have just been made, and I desire the attention of the gentleman from Mississippi [Mr. JOHNSON]. Without any warrant of authority and entirely gratuitously he has sought to slander a man who, I think, is rendering a splendid service to the United States. The gentleman from Mississippi [Mr. JOHNSON] voluntarily charges that the president of this Shipping Board, Mr. Powell, is making contracts with himself as the head of the Bethlehem Steel Corporation. Mr. Powell is not the president of the Bethlehem Steel Corporation. Before he came here he entirely severed all connections that he had with that corporation. He was offered what might be counted a goodly salary to come here and give the benefit of his experience, so that some order might be brought out of the rotten, chaotic condition brought about by the previous administration.

Mr. JOHNSON of Mississippi. Will the gentleman yield?

Mr. WOOD of Indiana. No; I will not yield. Mr. Powell absolutely refused to accept a cent other than the nominal sum of $1 a month, giving his time and his service to his country without compensation, and I say it ill becomes any man who has any regard for the future of his country and her economic condition, precarious as it is, to attack and attempt to blacken the name of a man who is patriotically trying to be of some service and who is giving his time and his intelligence gratuitously to his country. In my opinion Mr. Powell is entitled to more credit for the reorganization of this disorganized corporation than any other one man, and he feels it to be his duty to do it, because the Government that he loves gave him his education. So I say instead of trying to blacken the character of men who are endeavoring to be of service to this country we had better hold up their hands and encourage them in these days when we need men of this character. [Applause.]

Mr. JOHNSON of Mississippi. Now will the gentleman yield?

Mr. WOOD of Indiana. I yield to the gentleman.

Mr. JOHNSON of Mississippi. I call the attention of the gentleman to the hearing conducted by himself, in which Mr. Powell appeared before the committee, and having reference in his statement to what Senator BORAH had said about him, put into this record a letter which he had directed to Mr. BORAH, and one from Mr. Lasker to him; and he also said that he had a contract with the Bethlehem Shipbuilding Corporation at that time which could earn him not more at the most than $5,000 or $10,000. That is in this record here.

Mr. WOOD of Indiana. Absolutely; and because of the fact that Mr. BORAH had done Mr. Powell an injustice he wrote him that letter; and Mr. BORAH, when he found that he was mistaken, graciously put it into the record and righted the wrong that he had done this man. The gentleman from Mississippi had better be equally just.

Mr. JOHNSON of Mississippi. Just another question now. Mr. Powell also stated that he had appointed a number of men who were formerly employed by the Bethlehem Shipbuilding Corporation to positions with the Shipping Board, and those men are now holding those same positions, settling claims.

Mr. WOOD of Indiana. I asked him the question myself, whether or not anyone connected with the Bethlehem Steel Corporation was connected with this organization, and he very promptly said "no," but that he had asked some of those men who had formerly been in the employ of the Steel Corporation, who by reason of their experience and fitness could render good service here, to come and take employment here; but they are entirely disconnected with the Bethlehem Steel Corporation and have no concern with its affairs; and he was bringing to the service of this corporation men whom he knew by reason of his association with them in that old corporation in the days when they were employing men in large numbers, and he knew that these men might be of service to him.

Mr. JOHNSON of Mississippi. But these same men are settling claims between the Bethlehem Shipbuilding Corporation and the United States.

Mr. WOOD of Indiana. They have nothing at all to do with the settling of claims, and they are not in that department.

Mr. JOHNSON of Mississippi. That is what the hearings show.

Mr. WOOD of Indiana. No; they do not show anything of the kind.

Mr. JOHNSON of Mississippi. I say they do.

Mr. WOOD of Indiana. The gentleman can say anything he wants to, and it is entitled to about as much credit as what he has said.

Mr. JOHNSON of Mississippi. I repeat my statement.

Mr. CONNALLY of Texas. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Texas offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amend page 4, line 11, by striking out $370,000 and inserting in lieu thereof $250,000.

Mr. CONNALLY of Texas. Mr. Chairman and gentlemen of the committee, I want to call the attention of those on the majority side of the House who have charge of the making of the legislative program to the fact that in this item there is an appropriation of $370,000 for maintaining the office of the Alien Property Custodian. Gentlemen will remember that when the trading with the enemy act was passed it provided that all alien-enemy property which was taken over by the Alien Property Custodian should be retained by him until otherwise provided by Congress. Inquiry at the office of the Alien Property Custodian as to what disposition is being made of estates in his hands elicits the information that the Alien Property Custodian is continuing to administer estates and properties in his hands just as he did before the treaties of peace were concluded with Germany and with Austria. It does seem to me that this Congress ought to formulate some character of legislation providing for the proper disposition of alien-enemy properties, and that it ought to provide for demobilizing the office of the Alien Property Custodian and for giving such properties into the hands of those to whom they belong. So far as I know, no step has been taken looking to that end, but this establishment continues in existence. In the face of all the commissions which have been appointed to consolidate and classify and eliminate duplications and things of that kind in the public service, here is one branch of the Government that ought absolutely to be wound up and demobilized, and yet so far as I know nothing whatever has been undertaken along that line. Can it be that the State Department intends to advise Congress to hold on to alien-enemy property until the claims of American citizens against German citizens and the German Government may be settled? If that is to be its policy, it ought to inform Congress.

It seems to me it is time to determine whether that is to be the policy of this Government or not. If it be the policy of the Government to return these estates to former alien enemies—because they are not alien enemies any longer, as we have concluded a treaty of peace—Congress ought to do something to execute that policy.

Mr. MADDEN. Will the gentleman yield?

Mr. CONNALLY of Texas. Yes.

Mr. MADDEN. The gentleman knows that we could not do that in this bill.

Mr. CONNALLY of Texas. No; but the gentleman is chairman of the Appropriations Committee, he is a member of the steering committee, and occupies a high place.

Mr. MADDEN. The gentleman is mistaken; he is not a member of the steering committee.

Mr. CONNALLY of Texas. Well, he ought to be if he is not. [Laughter.] I will say that, although he disclaims the soft impeachment, I do not blame him. I would deny it, too, if I were a member of the committee.

Mr. MANN. The gentleman never will be a member of the steering committee on either side of the House. [Laughter.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. CONNALLY of Texas. I ask for five minutes more.

The CHAIRMAN. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. CONNALLY of Texas. I will say to the other distinguished gentleman from Illinois that I can understand why he interjected that remark. Of course, it is not remarkable when I start to pay a compliment to another gentleman from Illinois that he should be in a hurry to attract the attention of the country to the fact that there are others from Illinois. [Laughter.] I will say to the gentleman who interrupted me as I was about to pay a compliment to his colleague that I believe the gentleman from Illinois [Mr. MADDEN], if he were on the steering committee, would undertake, in the interest of economy and the interest of proper legislative procedure, to see that the steering committee called the attention of the leader on the Republican side and other administration officials to the fact that here is one place where the boasted plea for economy should be put into effect; that here is one place where your campaign cry "Back to normalcy," "Back to the Constitution," "Back to orderly government," "Back to the people" could actually be realized, and that here you can take the Government out of business by taking the property in the hands of the Alien Property Custodian and giving it back to the people who are entitled to it; and if they are not entitled to it, to devise some method by which it may be treated under the rules of international law and treaty obligations.

There are 26 lawyers in the Alien Property Custodian's office. Twenty-six attorneys, and yet they are not able to devise a plan for submission to Congress as to how the activities of this bureau should be disorganized and the property returned to its proper owners.

Mr. BANKHEAD. The gentleman does not expect these 26 attorneys to devise means for putting themselves out of office, does he?

Mr. CONNALLY of Texas. No; there is no danger of the 26 lawyers doing that, because I do not think that a lawyer who is drawing a good salary is going around trying to repeal his office. But in all seriousness, gentlemen, I did not rise to make a partisan appeal. [Laughter.] Oh, well, if it is a partisan appeal to speak for retrenchment and economy, to return to the orderly processes of the Government, let the gentleman from Minnesota, the whip—and he is about the only whip that never hits anything [laughter]—let the whip of the Republican side make a sneer at what I am saying, but here is the place where you can put economy into effect, here is the place that the Government ought to be taken out of business, here is the place to divorce employees from the pay roll.

Mr. KNUTSON. Will the gentleman yield?

Mr. CONNALLY of Texas. I will.

Mr. KNUTSON. I would like to have the gentleman inform the House where they got the idea of the establishment of this bureau in the first place.

Mr. CONNALLY of Texas. If the gentleman from Minnesota had been awake during the war he would have known that Germany seized the property of all American citizens residing in Germany, and a proper system of retaliation necessitated the establishment of this bureau. Great Britain and France pursued the same policy. I dare say the gentleman from Minnesota voted for the bill.

Mr. KNUTSON. I voted for all the war measures.

Mr. CONNALLY of Texas. Then why did the gentleman ask me why this bureau was established? I can only attribute the question to the fact that when he voted for these measures he did not concern himself as to the whys and wherefores but voted in the way somebody told him to.

Mr. STAFFORD. Will the gentleman yield?

Mr. CONNALLY of Texas. Yes.

Mr. STAFFORD. Is it not a historical fact that the Germans did not seize American property until we had passed the alien property custodian act? Great Britain initiated the procedure, but Germany did not attempt to confiscate property of American citizens until the United States had first done it.

Mr. CONNALLY of Texas. I do not think that is material, I do not really know which country initiated the policy. I give the gentleman from Wisconsin credit for keeping in touch with that matter, but France, Germany, and Great Britain all followed it.

Mr. KNUTSON. The gentleman from Texas is well informed. Can he inform the House as to the particulars of the sale of he Bosch magneto and aspirin patents under the Democratic administration? I would like to have some information on that.

Mr. CONNALLY of Texas. I am not surprised that the gentleman from Minnesota [Mr. KNUTSON] is more concerned about the details of the sale of the Bosch Magneto Co., which belonged to enemy aliens, than he is in saving the Government of the United States $370,000 annually appropriated for the maintenance of a wholly useless war-time organization when we have returned to times of peace.

Mr. KNUTSON. Does the gentleman approve of those thefts?

The CHAIRMAN. The time of the gentleman from Texas has expired.

Mr. MANN. Mr. Chairman, I do not know that it is worth while to pay any special attention to the remarks of the gentleman from Texas [Mr. CONNALLY], who always makes bright and interesting speeches, purely from a parliamentary viewpoint. As I stated to the House a while ago, it is the desire of the Alien Property Custodian's office very speedily to present to the Congress, although that is not their special duty, some recommendations, directly or indirectly, for the winding up of the Alien Property Custodian's business. That matter has been delayed, as I understand it, by the fact that the peace conference here is absorbing the work in the main of the office of the Secretary of State, and, as international relations necessarily enter into the consideration of the subject, it has not been desirable to present a half-baked plan to the House, such as would undoubtedly have been presented if the gentleman from Texas had had charge of it.

Mr. CONNALLY of Texas. I am glad that my suggestion is getting such prompt consideration.

Mr. MANN. Oh, I made this statement to the House before the gentleman rose, but as usual he was not here when I made the statement.

Mr. CONNALLY of Texas. I frequently try not to be here when the gentleman speaks.

Mr. MANN. The gentleman would derive some information if he would be here not only when I speak but when other gentlemen speak, but as a rule the gentleman is here only when he inflicts himself upon the House.

The CHAIRMAN. The question is on agreeing to the amendment offered by the gentleman from Texas.

The amendment was rejected.

The Clerk read as follows:

BUREAU OF EFFICIENCY.

For carrying on the work of the Bureau of Efficiency as authorized by law, including salaries and contingent expenses; supplies; stationery; purchase and exchange of equipment; printing and binding; traveling expenses; per diem in lieu of subsistence; not to exceed $100 for law books, books of reference, and periodicals; and not to exceed $150 for street car fare; in all, $125,000: *Provided*, That no person shall be employed hereunder at a rate of compensation exceeding $1,800 per annum except the following: 1 at $7,500, 1 at $6,000, 1 at $4,250, 6 at $4,000 each, 3 at $3,600 each, 1 at $3,500, 2 at $3,250 each, 5 at $3,000 each, 2 at $2,750 each, 3 at $2,400 each, and 5 at $2,000 each.

Mr. COOPER of Wisconsin. Mr. Chairman, I desire to ask the gentleman in charge of the bill who is receiving a salary of $7,500 in this Bureau of Efficiency, which is as much as a Senator or a Representative in Congress receives?

Mr. WOOD of Indiana. The director of the bureau, Mr. Brown.

Mr. COOPER of Wisconsin. That is Mr. Herbert D. Brown?

Mr. WOOD of Indiana. Yes.

Mr. COOPER of Wisconsin. How long has he been director of that bureau?

Mr. WOOD of Indiana. Ever since it was organized.

Mr. COOPER of Wisconsin. When was it organized?

Mr. WOOD of Indiana. It was a part of the civil service until 1916, when it was made an independent bureau, and he was appointed by the President at that time.

Mr. COOPER of Wisconsin. During 1916, during the war, what was his salary—say, when he was first appointed?

Mr. WOOD of Indiana. This salary, like other salaries——

Mr. COOPER of Wisconsin. What was it then?

Mr. WOOD of Indiana. It was $5,000.

Mr. COOPER of Wisconsin. I think it was $4,000.

Mr. WOOD of Indiana. I may be mistaken about that.

Mr. COOPER of Wisconsin. I think it was $4,000. From 1916 to 1921 it has been increased to $7,500, which is as much as a Senator of the United States receives, as I said a moment ago. In my judgment, he does not render, nor has he ever rendered, services demanding any such salary as that.

Mr. BYRNES of South Carolina. Mr. Chairman, will the gentleman from Indiana yield?

Mr. WOOD of Indiana. Yes.

Mr. BYRNES of South Carolina. Is not the Bureau of Efficiency now engaged in rating the civil-service employees of the Government?

Mr. WOOD of Indiana. The Bureau of Efficiency is now under Executive order, issued by the President, engaged in making efficiency surveys of the various departments, which has been in the main completed, and many of the departments, those receiving lump-sum appropriations, are now reorganizing and fixing the salaries of the employees under that survey.

Mr. BYRNES of South Carolina. Was it not the purpose to have that bureau continue to maintain some standard of efficiency for employees so as to keep the Congress advised as to the efficiency of the various departments and organizations of the Government?

Mr. WOOD of Indiana. Yes.

Mr. BYRNES of South Carolina. That is why they are receiving this appropriation?

Mr. WOOD of Indiana. Yes.

Mr. BYRNES of South Carolina. Is there any other work which the Bureau of Efficiency is engaged in at this time?

Mr. WOOD of Indiana. Yes; it is engaged not only in measuring the efficiency of the employees within the Government, but likewise it is engaged in looking into the conduct of these various offices, and I wish to say in answer to the gentleman from Wisconsin that it is proving of very great value. There has been more or less opposition to the Bureau of Efficiency. I am not here holding any brief for the Bureau of Efficiency. I may not like all the things that Mr. Brown has done, I may not like his personality, but I must give him credit for being not only energetic but proficient in bringing about results, and they have been very salutary, and had these other departments admitted the Bureau of Efficiency as it was the intention so to do when it was created, to make suggestions, and had those suggestions been adopted, we would have had the same good results that came from the application of their plan that we did get in the Post Office Department as adopted by Postmaster General Burleson.

Mr. BYRNES of South Carolina. If this appropriation is made, the Bureau of Efficiency will continue to carry on these investigations for the purpose of devising more economic ways of managing the various departments?

Mr. WOOD of Indiana. Yes.

Mr. BYRNES of South Carolina. Mr. Chairman, I move to strike out the last word, and I do that for the purpose of calling to the attention of the House one of the activities of the Bureau of the Budget which has just come to my attention. I interrogated the gentleman from Indiana because I understood the duties of the Bureau of Efficiency to be just as he has detailed them. Personally, I think they have been doing very good work, but the Bureau of the Budget, charged with the duty of preventing duplication of work in this Government, is responsible for the issuance of an Executive order which has established another bureau in the Government to do exactly the work which the gentleman from Indiana has stated the Bureau of Efficiency is doing. Think of the Bureau of the Budget, charged with eliminating duplication, saddling onto the executive departments at this time another board to do exactly that which is being done by the Bureau of Efficiency. I want to call attention first to the Executive order to which the gentleman from Indiana referred, which was issued October 24 and is headed, "Uniform Efficiency Ratings," requiring the Bureau of Efficiency to establish such ratings. It provides in section 3:

As of May 15 and November 15 of each year, a rating shall be made of the efficiency of each employee during the preceding six months or such portion thereof as he or she may have been employed.

And then comes the requirements that they shall establish standard ratings, special ratings, and personal changes. And it provides in section 7:

Efficiency ratings made in pursuance of the provisions of this order shall be the basis for all changes of compensation of employees in the classified service in the District of Columbia.

And now here, on December 23, 1921, just two months later, there comes an Executive order, signed by the Director of the Budget, by direction of the President, addressed to the House of Representatives, establishing the Federal personnel board. It says in section 1:

For the purpose of developing in the Federal Government a more effective and economical system of employment and personal management and to promote the general welfare of the employees of the National Government, there is hereby established a Federal personnel board under the supervision of the United States Civil Service Commission.

And then it is provided that there shall be a chief coordinator. We long since discontinued allocating and now we are engaged in coordinating. And we have a chief coordinator—

who shall assign a representative to the Federal personnel board for the purpose of coordination.

And here is what the board is to do:

First. The perfection of a liaison system between the Civil Service Commission and the several departments and establishments to insure cooperation.

We have an appointment clerk in each department, who is in daily touch with the Civil Service Commission, and a chief clerk in each department whose duty it is to maintain a contact with the Civil Service Commission, but now we are to have a liaison officer. And second:

The perfection of methods whereby the Civil Service Commission will be advised regarding the success or failure of persons selected through its examination, and whereby provision will be made for the reassignment or the separation from the service of persons who are unsatisfactory.

If a person is unsatisfactory, the Civil Service Commission must be advised. The Civil Service Commission has not the power to remove him if he is unsatisfactory but the department has.

And then there is section (d), as follows:

The development of an adequate system of personnel records which will furnish a medium for effective control of personnel administration and provide some basic statistics for such matters as retirements and disability, appropriation estimates, salary rate adjustments, etc.

They are to provide a system of basic statistics in order to enable the departments to make salary rate adjustments, and the Bureau of Efficiency two months before was directly charged with the duty of furnishing efficiency ratings every six months in order that the compensation of the employees might be fixed.

There is only one conclusion, that if this board is functioning and a man is detailed from every department to this board, and they can call upon the departments for information upon which to base efficiency rating, and the Bureau of Efficiency is also calling on them for efficiency information, you owe it to the departments to increase the appropriations for clerk hire in order that they may answer the inquiries made of them. This is pyramiding one board on top of another at the expense of the people. It is doing, by Executive order, that which could never get through this Congress. There is no excuse for it all. You are going to have one efficiency rating by this personnel board and one by the Bureau of Efficiency. Suppose they do not agree, which rating are you going to follow? What business has the Civil Service Commission dealing with this question? Their duty is to have examinations held in order to certify employees and not to report to departments how an employee may be separated from the service. They know how that should be done.

Mr. ANDREWS of Nebraska. Under this order, what would become of the unclassified reclassification bill that passed a few days ago?

Mr. BYRNES of South Carolina. I ask you to tell me on what that reclassification is going to be based? Are you going to take the efficiency record under the order of December 3, prepared by the personnel board or the efficiency rating prepared by the Bureau of Efficiency, under the Executive order of October 24, 1921?

The CHAIRMAN. The time of the gentleman from South Carolina has expired.

Mr. MANN. Mr. Chairman, we have a Bureau of Efficiency and a Director of the Budget; we had a Reclassification Commission that went out of existence, and we have now a Reclassification Committee reclassifying the departments, and we have a Committee on Reform of the Civil Service in the House. They have just passed a reclassification bill in the House affecting the departments. The Bureau of Efficiency is the child of the Committee on Appropriations. The Director of the Budget is the younger brother created, or appropriated for, by the Committee on Appropriations. I have always known the members of the Committee on Appropriations, when either one of these children was attacked, to promptly come to its assistance. But I notice that the love of the committee now is for the older child rather than for the younger brother. Here is a row on between the Bureau of Efficiency and the Director of the Budget, and the gentleman from South Carolina, one of the nicest men that ever came to this House [applause], certainly derived his information from Mr. Brown, the head of the Bureau of Efficiency, and takes a crack at the Bureau of the Budget, the younger brother. I do not know, but I would like some one to give an excuse for the existence, or continued existence, of the Bureau of Efficiency. I have great regard for the head of that bureau, Mr. Brown. I believe he is a most efficient public servant, and does great good, but he is the best man to get influence with the Committee on Appropriations that ever and all time has appeared in Washington.

Mr. GALLIVAN. Will the gentleman yield?

Mr. MANN. I yield.

Mr. GALLIVAN. I want to say to my friend from Illinois that ever since I have been on the Committee on Appropriations I have tried to find out what good reason there is for the existence of the Bureau of Efficiency, and I have always opposed the annual increases that my friend Brown has been able to put across in this Chamber. I am with the younger brother, the gentleman refers to. I am with the younger brother.

Mr. MANN. Well, I hope that may continue, although I predicate this statement and make this prediction, that if the gentleman from Massachusetts gets to that place in the committee where he has charge of a committee of this kind, Brown will have him on his back. [Laughter.]

Mr. GALLIVAN. I can assure my friend that will never happen; never in a million years. [Laughter.]

Mr. BYRNES of South Carolina. Mr. Chairman, will the gentleman yield to me?

Mr. MANN. Yes.

Mr. BYRNES of South Carolina. I know the gentleman will permit me to say that——

Mr. MANN. I will permit you to say anything——

Mr. BYRNES of South Carolina. While his statement may be true, I do not know Mr. Brown, and I do not think I ever met him, and therefore I have never come under his spell.

Mr. MANN. That shows how wily Brown is, to make men whom he never met act just like automatons at a suggestion to their mind. [Laughter.]

Mr. BYRNES of South Carolina. I did not make myself clear if the gentleman understood me to say that there is any discrimination in my mind as between the Bureau of the Budget and the Bureau of Efficiency. What I am complaining about is the establishment of this personnel board in the Civil Service Commission to do that which is under the Bureau of Efficiency. What I want to do is to put it in one or other, and when the civil-service paragraph is reached I hope to make some remarks along that line.

Mr. MANN. I have made no reflection on the gentleman.

Mr. BYRNES of South Carolina. No; the gentleman was very complimentary to me.

Mr. MANN. I notice that Mr. Brown, according to the morning papers, has stated to the Director of the Budget, acting for the budget, "You can go to ——," the place we frequently name when we talk in private. [Laughter.]

The CHAIRMAN. The time of the gentleman from Illinois has expired.

Mr. ANDREWS of Nebraska. Mr. Chairman, I move to strike out the last two words.

The CHAIRMAN. The gentleman from Nebraska moves to strike out the last two words.

Mr. ANDREWS of Nebraska. Mr. Chairman, I desire to propound a question to the gentleman in charge of the bill. In the Treasury Department the appointment clerk receives $3,000 a year salary. The appointment clerk in the Bureau of Internal Revenue receives $4,500. In the General Accounting Office the appointment clerk receives $2,500. In the Treasury Department the appointment clerk handles all the business of the entire department. The appointment clerk in the Internal Revenue Bureau handles the work of that bureau in detail and turns it over to the appointment clerk of the department for completion. The appointment clerk in the General Accounting Office has 1,500 people to look after. Now, is there any law by means of which an equitable adjustment of ratings may be made in cases like these?

Mr. WOOD of Indiana. Absolutely, and there is provision made for it. Whenever it is applied this discrepancy will no longer exist.

Mr. ANDREWS of Nebraska. What is that provision?

Mr. WOOD of Indiana. I am not prepared to state it offhand, but at the time we had under discussion the reclassification bill I had the figures before me showing that under the classification which I proposed like service would receive like pay.

Mr. ANDREWS of Nebraska. Does not the gentleman believe that it would be wise to make provision in this bill making it impossible to have such wide diversities of salary as these?

Mr. WOOD of Indiana. Yes; I think it would be, but you can not do it under this bill. That is the trouble.

Mr. ANDREWS of Nebraska. If you should adopt a provision that they shall not be allowed a figure beyond a certain salary, that would surely enforce it. I am sure the so-called reclassification bill will not correct such inequalities. The formula, "like service should receive like pay," will not solve this problem under the reclassification bill or any other bill that has yet been proposed.

Mr. Chairman, I want to direct attention for a moment to the connection of the Civil Service Commission with this Board of Personnel. I think that is one of the most mischievous arrangements that can be introduced into the executive service of the Government. That Civil Service Commission is the greatest meddler in outside affairs that there is in the Government wherever they have a chance to meddle. I have witnessed this time and time again. The Civil Service Commission has a specific function to perform, and that is the establishment of eligible registers for the different grades of the public service. They ought to be held to that. There are many people who firmly believe that they should not be given even that much. But they ought at least to be held to that line, and whenever by law or by Executive order we allow them to go outside of that range we are inviting trouble.

How can the Civil Service Commission know anything about the efficiency of clerks with whom they never come in contact? How can the efficiency of a clerk be determined except by the people who make observation of that clerk, who study his ability and adaptability to the particular kind of work on which he is engaged? No Civil Service Commission can ever do that unless you supply them with a force adequate to go into all these various offices and bureaus and study every individual clerk.

Mr. COOPER of Wisconsin. Mr. Chairman, will the gentleman permit an interruption?

Mr. ANDREWS of Nebraska. Certainly.

Mr. COOPER of Wisconsin. I do not understand that by Executive order it is contemplated that the Civil Service Commission shall enter these departments, or go in there all the time investigating conditions. Not at all; but only when the personnel commission, composed of people in the departments, shall consult with the commission in regard to the advisability of certain changes.

Mr. ANDREWS of Nebraska. Let me call the gentleman's attention to the fact that even with the provision that he suggests that personnel commission must have a force sufficient to learn the facts, just as the heads of each division and every bureau must learn the facts. How can you know what the qualifications of an individual may be or what his adaptability may be to a certain task unless you are in contact with the business and with the individual?

Mr. GREEN of Iowa. Mr. Chairman, will the gentleman yield?

Mr. ANDREWS of Nebraska. I yield.

The CHAIRMAN. The time of the gentleman from Nebraska has expired.

Mr. GREEN of Iowa. Mr. Chairman, I ask unanimous consent that the gentleman from Nebraska may have five minutes more.

The CHAIRMAN. The gentleman from Iowa asks unanimous consent that the gentleman from Nebraska may have five minutes more. Is there objection?

There was no objection.

Mr. GREEN of Iowa. I will say to the gentleman from Nebraska that possibly this is provided for on the next page, where the sum of $56,780 is appropriated for additional employees. Perhaps that is where they expect to get the men to perform this additional service.

Mr. ANDREWS of Nebraska. Whether that be true or not—I take it for granted that the committee in charge of the bill would not make that serious mistake—the gentleman from Iowa has performed a public service by calling attention to that point.

Let me emphasize one more point, Mr. Chairman. Take the question of appointment clerks, to whom I have referred. Compare them with law clerks, who receive $2,000 salary ordinarily and some $2,500. Take the clerks who are examining the most intricate accounts in the department, clerks upon whose judgment executive officers will sign papers aggregating the billions of dollars that go out from the Treasury. Their work is far more important than the work of an appointment clerk.

What are the requisite qualifications of an appointment clerk? First, he must understand the rules of the Civil Service Commission, and that is enough to drive anybody crazy in an ordinary period of time. What next? Why, an appointment clerk must be the cleverest liar on earth, able to turn so quickly that even Senators and Members and heads of departments can not catch him. [Laughter.] Now, when you take into account the shifting of the cards, the placing of this man here and that man there, you have the work of an appointment clerk; but the man who studies the law, the man who analyzes the facts, the man who does the work, gets $1,800 or $2,000 a year, while a third-rate appointment clerk gets $4,500 a year in the Bureau of Internal Revenue. Former Secretary McAdoo established that grade. Will Secretary Mellon and Commissioner Blair ratify and perpetuate it? If they do, will they not be compelled to cease talking economy? The appointment clerk for the department handles the record for 67,000 people approximately, while the appointment clerk for the Bureau of Internal Revenue had on his roll 19,637 July 1, 1921. Down with McAdoo, salary profiteer!

Mr. STEVENSON. Will the gentleman yield?

Mr. ANDREWS of Nebraska. I yield to the gentleman from South Carolina.

Mr. STEVENSON. Was that the position which the gentleman held when he was in the Treasury Department? [Laughter.]

Mr. ANDREWS of Nebraska. It was not, sir. When I was in the Treasury Department I never permitted any inequality of that sort when I had the power to stop it; and when I had a chance to disallow a salary on the basis of inequitable distribution, as I have stated, I disallowed it and forced them to the line. Does the gentleman from South Carolina want to ask another question? If he does, come on.

Mr. STEVENSON. I just wanted to know what class of people the gentleman got? He says they are a bunch of the biggest liars in the world. [Laughter.]

Mr. ANDREWS of Nebraska. I did not have any appointment clerk. He was over in the Civil Service Commission or the department.

Mr. BARKLEY. The gentleman is talking about the present administration. [Laughter.]

Mr. ANDREWS of Nebraska. Oh, no. I had two years under a Democratic administration, and that was the worst thing I ever met in my life. [Laughter.]

The Democrats increased the total disbursements of the Government for the fiscal year 1913, $43,000,000; for 1914, $39,000,000; for 1915, $35,000,000; and $129,000,000 by June 30, 1916.

The civil-service rules and regulations were deliberately disregarded, and worthy and competent Republican chiefs of divisions and clerks of higher grades were reduced in order to promote Democrats.

In the old second auditor's office the reduction and displacement of competent Republicans, including many ex-Union soldiers, were made for the sole purpose of benefiting Democrats. The man who was placed in charge of that office by the Wilson administration was soon recognized as one of the most noted political headsmen of his time. The political guillotine never swung more speedily than it did in that office at that time. Even ex-Union soldiers fell under it as though they had been traitors to their country.

Note the profligate waste of public money during the World War. If we had to-day the billions of dollars that were wasted by the Democratic administration during the war we could pay the total running expenses of this Government, according to the Republican standard, nearly two years without levying a single dollar in taxes. If that were not bad enough, how could you make it worse?

Mr. WINGO. Will the gentleman yield for a question?

Mr. ANDREWS of Nebraska. Yes.

Mr. WINGO. Has the service improved any since the gentleman left it? [Laughter.]

Mr. ANDREWS of Nebraska. It has not; but we are trying to improve it now.

Mr. BARKLEY. I hope the gentleman is not going to claim that he comes within that qualification himself.

Mr. ANDREWS of Nebraska. Oh, no. Like the gentleman from Kentucky I stood foursquare and did the right thing. [Applause.]

Mr. Chairman, I yield back the remainder of my time.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

For additional employees for the Civil Service Commission, $56,780: *Provided*, That no person shall be employed hereunder at a rate of compensation exceeding $1,800 per annum, except three at $3,000 each.

Mr. BYRNES of South Carolina. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from South Carolina offers an amendment which the Clerk will report.

The Clerk read as follows:

Page 5, line 23, after the word "commission" strike out the figures "$56,780" and insert "$50,000."

Mr. BYRNES of South Carolina. Mr. Chairman, the experience of this Congress has been that whenever we have placed temporary employees upon the roll it has been almost impossible to separate them from the service. In view of that fact I am going to put this proposition up to the House now, because the House might as well determine what it is going to do. This is not the only bill where the departments are asking for temporary employees. Departmental officers have long since learned that when they come to the Committee on Appropriations and ask for an increase of their statutory force it is difficult for them to "get by," but if they can ever get temporary employees authorized on the ground that there is an emergency demanding their employment they know that at end of the year the fight is no longer theirs; that the employees will go to the Senators and Representatives from their States and beg them to make the fight their fight, and as a result the department head is able to continue on his rolls the temporary employees appointed for an emergency. That is our experience, and the Members of this House know it. Yet at this time, when you are preaching throughout the country about reducing employees in the service of the Government, the departments are asking in several bills for appropriations for temporary employees beyond the appropriations previously authorized. It is true that the Civil Service Commission attempted to do just what I have said they all do. They tried to get this committee to get $26,500 appropriated last year for temporary employees transferred over to the permanent roll, but the committee very properly refused to do that. But my good friend from Indiana [Mr. WOOD] had an unusual softening of the heart—unusual for him, because I will say that he generally makes an effort to hold down the expenses of the Government—and he made a recommendation to the committee of $60,000 for temporary employees for the Civil Service Commission, instead of $50,000, which they have this year. Subsequently in the full committee that was reduced to $56,780.

Now, my amendment is to put them right back where they are this year, at $50,000. When you do that you are doing more than you ought to do. How can you tell the people of this country that you are honest in your statement in reducing the number of employees on the pay rolls of the Government when at the same time you are appropriating more money for the purpose of holding examinations for new employees for the Government?

You can not argue that to any man with any sanity at all. Why, if you are reducing the employees of this Government you must have a roll now in the Civil Service Office of employees having a civil-service status who are being daily separated from the service who are eligible for appointment and whose competency has been tried and proved, and they should be appointed to any vacancies instead of holding new examinations throughout the country at an expense to the Government. Let us see the record you are making. Look at the facts. On June 30, 1916, according to the Civil Service Commission, all the employees of the Government numbered 439,798. During the war they increased, until November 11, 1918, there were 917,760. Now, three years after the war, we have only reduced them down to 597,482, or 162,000 more than we had June 30, 1916.

The Civil Service Commission say they need this money because they now conduct more examinations—at a time when we are supposed to be reducing the number of employees. They say they will examine 300,000 persons next year, and therefore they want an increased appropriation. Well, they examined 461,000 in 1919, according to their own statement, and their total appropriation only amounted to $660,000. This bill carries $673,000, and they only claim that they will examine 300,000. You and I know that they have no business examining 300,000 people, for they have this large number of people on the eligible list that can be reinstated.

Mr. KINCHELOE. Will the gentleman yield?

Mr. BYRNES of South Carolina. Yes.

Mr. KINCHELOE. Can the Civil Service Commission reinstate a man who has been discharged if he is on the eligible list?

Mr. BYRNES of South Carolina. Yes; they can do that under the law, as I understand.

Mr. KINCHELOE. The reason I ask the question is that I had an ex-service man who had a civil-service status as a railway mail clerk, and I tried to get the commission to reinstate him, and they refused to do it.

Mr. BYRNES of South Carolina. I am not interested in any one case. They, of course, have discretion and may abuse it.

The CHAIRMAN. The time of the gentleman from South Carolina has expired.

Mr. BYRNES of South Carolina. Mr. Chairman, I ask for five minutes more.

The CHAIRMAN. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

Mr. BYRNES of South Carolina. What I want to know is whether or not Congress is going to embark on increasing the number of temporary employees in this department of the Government—the Civil Service Commission—whose sole business it is to furnish additional employees in the Government service? It will be interesting to other subcommittees of the Committee on Appropriations. There is an additional reason also—my good friend from Illinois said that we are interested in the contest between the Bureau of Efficiency, the elder brother, and the Budget Bureau, the younger brother. I am not interested in it at this time, but what I am interested in is doing what the Budget Bureau was supposed to do—eliminate some of the duplications.

Now, I notice in the last few days that the Civil Service Commission has sent a supplemental estimate to the Committee on Appropriations. The Chief of the Bureau of the Budget sent it for the Civil Service Commission. That the Chief of the Bureau of the Budget has never understood the budget act is evident, because the act provides that he shall not submit supplemental estimates unless there is an emergency. He submits a supplemental estimate only a month after this committee has had its hearings asking an increase of salary for the Civil Service Commissioners. Can anybody say what emergency demanded the submission of a supplemental estimate of that kind?

Mr. MADDEN. Will the gentleman yield?

Mr. BYRNES of South Carolina. Yes.

Mr. MADDEN. I will say that I will be glad to join the gentleman, or any other gentleman on the Appropriations Committee, to see that whatever recommendations are made in that connection are not made effective.

Mr. BYRNES of South Carolina. I am glad the gentleman joins me, and I assure him that I will be fighting with him, because there is an additional reason. Since the hearings on the bill the commission has submitted within the last few days an estimate for $100,000—some of it to increase the salaries of the commissioners—and for another purpose, to investigate the character of the applicants for civil-service positions. I do not know whether the purpose is to use some of these funds for the personnel board, but I suspect that is intended. If you establish a Bureau of Efficiency you should maintain it, but do not come here and saddle the personnel board on the Government.

The one reason I asked the question of the gentleman from Indiana as to the Bureau of Efficiency, I wanted him to state which one he was in favor of. If he said the Civil Service Commission, I would move to strike out the Bureau of Efficiency, and if he stands for that he can not defend the desire of the Civil Service Commission to establish this personnel board.

Mr. GREEN of Iowa. Will the gentleman yield?

Mr. BYRNES of South Carolina. Yes.

Mr. GREEN of Iowa. As I understand the gentleman, if there were not more than 300,000 persons examined they would have plenty for the departments and more than they could use.

Mr. BYRNES of South Carolina. Yes. The gentleman knows that if they have taken many employees off of the rolls they would be eligible for reinstatement. If you say that you are going to reduce the number of clerks in the service and then appropriate $56,000 for temporary clerks, thus increasing the appropriation to hold more examinations, to appoint more employees, you can not defend it.

Before I forget, let me tell my friend this: Do not get the idea that this is connected with the presidential postmasters, because $75,000 is specifically included for that purpose; this $50,000 that is carried can not well be charged up to that, for the reason that they say they have brought the postmaster examinations up to within 60 days and would soon be up with them. If that is true, then many clerks can go back on the regular work. If you appropriate this money, it is simply notice to all of the other subcommittees of the Appropriations Committee that the bars are down and that you are going to put temporary employees on, knowing well that if we do that,

that at the end of 12 months they are going to be begging to be kept and that you never will get them off the rolls.

Mr. GREEN of Iowa. I was merely going to ask what the commission claims these clerks are going to do?

Mr. BYRNES of South Carolina. The commission claims that they are necessary because they are behind with their work and they need them to keep up with that work; but they have as much money as they had a year or two ago when they had more examinations. And if they will certify some of the employees who are daily being separated from the rolls, and who are eligible, they would not have to hold examinations and would not need so many clerks in the civil service.

The CHAIRMAN. The time of the gentleman from South Carolina has expired.

Mr. WOOD of Indiana. Mr. Chairman, I wish to call the attention of the committee to the situation with reference to this appropriation. The Budget recommended an increase in the salaries of the employees of the Civil Service Commission. The employees in the Civil Service Commission are paid less proportionately for the service being rendered than in almost any other department of the Government. The turnover in the Civil Service is greater than in any other department of the Government. It may seem strange, but the fact is that even with the dearth of employment now existing, the turnover in the Civil Service last year was 76 per cent. This appropriation that is being recommended in this bill is less than that carried in 1922 by $3,220, and it is $10,000 less than that recommended by the Budget. Where the confusion seems to arise is here: It is the policy of the Committee on Appropriations not to increase any salaries, depending, if you please, upon the reclassification that has been promised us for so long. Therefore, when we found that we were not to increase these salaries, as recommended by the Budget, we had to reform the situation, taking those out of the statutory rolls that were put in under the estimate and placing them back again in the lump-sum appropriations. In doing that this increase occurs, but if you will examine it all the way through, you will find that we have absolutely reduced the cost of this activity $3,220, as compared with the appropriations for 1922, and that it is $10,000 less than that recommended by the Budget.

Mr. BYRNES of South Carolina. Mr. Chairman, will the gentleman yield?

Mr. WOOD of Indiana. Yes.

Mr. BYRNES of South Carolina. The gentleman does not mean to say that the appropriation is not $50,000 for the current year for temporary employees?

Mr. WOOD of Indiana. No; I do not wish to say that; but I say that in this rearrangement, if you will take the sum appropriated for the statutory roll last year and the sum appropriated for the lump-sum appropriation last year and compare them with the like appropriations this year, you will find that it is $3,220 less than that appropriated last year.

Mr. BYRNES of South Carolina. I have done that, but my figures do not agree with the figures the gentleman gives. Is not the gentleman confused in that he reduced that out of printing and binding?

Mr. WOOD of Indiana. When we take the whole amount of reduction into consideration, the gentleman is correct. I wish to call attention in passing to the increased activity of the Civil Service. In 1916 the total number of examinations was 154,000 in round numbers, in 1919 they were 461,000, and in 1920 they were reduced to 325,000. In 1921 they were increased to 328,000.

I call attention to the further fact that during the war the Civil Service Commission had an appropriation of $250,000 for the extra service for which we are now allowing them only $50,000, when as a matter of fact the volume of the work is almost equal to that which they had on their hands at that time. In addition, there has come this extraordinary work of the post-office examinations. Some one may say that that was true during the Wilson administration, but it was practically over during the last days of the Wilson administration.

The CHAIRMAN. The time of the gentleman from Indiana has expired.

Mr. WOOD of Indiana. Mr. Chairman, I ask unanimous consent to proceed for five minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. WOOD of Indiana. The entire examination of the fitness of postmasters all over this country has now been devolved upon the Civil Service Commission. One reason why this apparent increase in the lump-sum appropriation in the minds of your committee was essential is because of the fact that the service required in the civil service, if it is worth anything at all, is of a very high grade, or should be. Civil-service employees are passing on the fitness of applicants for technical places in the various branches of the Government where the most vital interests of the Government are involved, carrying salaries of four, five, and six thousand dollars a year. Those positions are passed upon by civil-service employees receiving salaries of twelve or fourteen hundred dollars each. The apparent increase is caused here by the fact that in order that they might have some relief in that regard, so that they could employ a few more higher-priced clerks at one hundred or two hundred dollars a year more, a very few, amounting to not more than three or four thousand dollars, in order that they might have more efficiency and that they might have more practical examinations where these technical jobs are involved. So that if we are to do that which is best for ourselves, that which is best for the people we are serving, we ought to have this agency of the Government so equipped that they can best render the service imposed upon them. That is the only reason for this, and, as a matter of fact, we have reduced the entire appropriation $10,000 below that recommended by the Budget and $3,220 below that carried last year.

Mr. KINCHELOE. Mr. Chairman, will the gentleman yield?

Mr. WOOD of Indiana. Yes.

Mr. KINCHELOE. Why could not the Civil Service Commission, when the civil-service status of any of these clerks is about to expire by reason of limitation, which is a year, extend the status for another year?

Mr. WOOD of Indiana. I understand that the practice is that a person who has disconnected himself from the civil service may be reinstated within a year if he desires.

Mr. KINCHELOE. I am talking about the ones who have acquired a status but who have never been put in a position. As I stated to the gentleman from South Carolina, an ex-service young man in my district wrote to me the other day that his year was out. He had a civil-service status as a railway mail clerk. They absolutely refused to do it. Why should they refuse?

Mr. WOOD of Indiana. I do not know why. That is a matter of administration. We have nothing to do with it.

Mr. WINGO. Will the gentleman explain this policy, too: A man who has been separated from the service and wishes to be reinstated is not asked to file an application for reinstatement—say a clerk in a first-class office or rural carrier. They hold he must make a new application after a vacancy has occurred before there is a certification. And in every case I have had the man did not know of the vacancy until after the Post Office Department had called on the Civil Service Commission for a certification. I know the case of one man where that has happened twice, and he is trying to get back in. They will not treat his application for reinstatement as a general one. They must make the application before the vacancy occurs and after the application of three names is called for to fill it. What is the reason for that policy?

Mr. WOOD of Indiana. I will state in answer to that argument, and it is well taken, that I have run across the same thing. It is absolutely impossible to get his application for reinstatement in in time before some man that is on the original list between the time of the discharge and his time of application for reinstatement. And I wish to say, in answer to the gentleman, that the present head of the Civil Service Commission is trying to invoke a new policy for the purpose of curing that very thing. He is trying to do this, and that is one of the reasons, I understand, that they have sent down an additional request for money; that they can put a little bit of practicability into that examination of these rural carriers. A lot of these boys out of a high school can take the examination and put it all over a man who has had years of experience in that kind of thing, when under the policy he is entitled to preference.

The CHAIRMAN. The time of the gentleman has expired.

Mr. FESS. Mr. Chairman, I ask unanimous consent that the time of the gentleman be extended two minutes.

The CHAIRMAN. Is there objection? [After a pause.] The Chair hears none.

Mr. FESS. Mr. Chairman, I have been interested in the controversy about the duplication of the Efficiency Board and this new organization. Has the gentleman gone into that?

Mr. WOOD of Indiana. I have gone into it some, and I wish to say here and now that we are not in accord with this idea of appointing a commission upon a commission. There has been a pyramiding of the so-called efficiency propositions, and I have never been able to understand why this last one was appointed, but there seems to be somebody who thought there was some reason for it.

That is just the trouble. We are appointing and reappointing and pyramiding these positions. It has become a practice that has been encouraged so much in the last 10 or 15 years

that we have boards that are in constant conflict with each other. So far as I am concerned, I do not approve the action of appointing this last commission.

Mr. FESS. Will the gentleman yield further?

Mr. WOOD of Indiana. I yield.

Mr. FESS. I would not be ready to vote to eliminate until I had looked into the necessity for this new board. It might be essential to the Budget system, but it does seem to me, if it is essential, we ought to eliminate the other.

Mr. WOOD of Indiana. It is not costing the Government anything, because it is made up of selections from these several departments. It is an advisory sort of an arrangement. But, as I say, I do not understand the necessity for it. I want to say in passing that this Bureau of Efficiency—and I have taken some pains to inquire into its workings, because it has been criticized in this House and on the other side more than almost any other activity, I believe—has rendered more service than most any other activity in this Government.

Mr. FESS. Does the gentleman believe the new institution will ultimately involve an appropriation?

Mr. WOOD of Indiana. Yes; that is what I think. I never knew one that did not.

The CHAIRMAN. The question is on the amendment offered by the gentleman from South Carolina.

The question was taken, and the Chair announced that the ayes seemed to have it.

Mr. WOOD of Indiana. Division, Mr. Chairman.

The committee divided; and there were—ayes 16, noes 63.

So the amendment was rejected.

Mr. COOPER of Wisconsin. Mr. Chairman, I move to strike out the last word. I want to make one statement in reply to the gentleman from Indiana [Mr. WOOD] about what he called the difficulty of passing the civil-service examination for appointment as rural mail carriers. I am quite sure he has not seen the official statistics. They were given to me seven months or more ago by a member of the Civil Service Commission. The gentleman from Indiana [Mr. WOOD] spoke of the extreme difficulty of passing that examination unless the applicant was fresh from school. Now, as a matter of fact there were 18,000 applications for rural carriers last year, and yet this very difficult examination was passed by more than 11,000 of the applicants, and many of the 7,000 who failed to pass failed because of physical disqualifiation and not on account of any trouble with their mental powers or scholarship. Those are the facts.

Mr. ROACH. Mr. Chairman, I offer an amendment to the section just read.

The CHAIRMAN. The gentleman from Missouri offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. ROACH: Page 5, line 25, after the word "each," insert "*Provided further*, That no portion whatsoever of the sums hereinbefore or hereinafter appropriated shall be employed, used, or expended in holding or defraying the expenses of holding examinations for the appointment of presidential postmasters."

Mr. WOOD of Indiana. Mr. Chairman, I make the point of order against the amendment because of the fact that it is legislation. It is not a limitation.

The CHAIRMAN. Does the gentleman from Missouri wish to discuss the point of order?

Mr. ROACH. I would like to make this statement, if the Chairman please, that I do not believe the point of order is well taken on the grounds on which it is presented. As I understand, the appropriations that are being made are proposed to cover the very items that I am objecting to being paid out, namely, the expenses incurred in holding examinations to fill the offices of first, second, and third class postmasters. It is my information that fourth-class post offices are under what we know as the law of the classified service, but that the first, second, and third class post offices are not under the law of classified civil service, and, if that is true, then this amendment would not be legislation on an appropriation bill.

Mr. MANN. Mr. Chairman, will the gentleman yield?

Mr. ROACH. I do.

Mr. MANN. Is not the gentleman's amendment a mere limitation on the expenditure of the appropriation?

Mr. ROACH. Yes, sir.

Mr. MANN. And simply provides that no part of the funds shall be used for that purpose?

Mr. ROACH. Yes, sir.

Mr. MANN. That is all of it, then.

Mr. WOOD of Indiana. You had better read it.

Mr. MANN. That is the trouble; I did read it.

Mr. ROACH. It says "hereinafter" in this bill, not "hereafter." The amendment I have offered simply provides that money from none of these items mentioned in the section previously read shall be paid out for the examination of first, second, and third class postmasters; neither shall the money in any of the other items mentioned in this bill be used for that particular purpose.

The CHAIRMAN. The point of order is well taken, on the ground that one can not determine at this time what would be or what would not be germane to the subsequent sections of the bill. The Clerk will read.

Mr. WINGO. Mr. Chairman, I would like to be heard on the point of order.

The CHAIRMAN. Well, the Chair will hear the gentleman.

Mr. WINGO. Mr. Chairman, as I understand the point of order, it is that this is legislation. There is no legislation on presidential postmasters, because under the Constitution we can legislate only upon the minor civil offices, and we can certainly put a limitation upon the expenditure of any fund, even if it were for a purpose covered by the legislation. It is plain it is a limitation on the expenditure of money. I do not see how the Chair can hold that because in some other places in the bill there might be some legislation that this would affect this is not in order. This is not a legislative bill. This is an appropriation bill. We can put a limitation on any item in an appropriation bill at any place.

The CHAIRMAN. The Chair sees no reason to change his decision. The Clerk will read.

The Clerk read as follows:

Field force: District secretaries—2 at $2,400 each, 1 $2,200, 4 at $2,000 each, 5 at $1,800 each; clerks—1 of class 4, 1 of class 3, 1 of class 1, 7 at $1,000 each, 6 at $900 each, 5 at $840 each; messenger boy, $480; in all, $45,680: *Provided*, That the Civil Service Commission shall include in its estimates for 1924 items covering the field force detailed from departments and offices, and the heads of such departments and offices shall in their estimates for 1924 make corresponding reductions in the appropriations from which the employees detailed to the Civil Service Commission have been paid.

Mr. SEARS. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Florida moves to strike out the last word.

Mr. SEARS. Mr. Chairman, I hesitate to address my colleagues, because I know it is usually the custom when a man is down to kick him, and the Shipping Board has certainly received its share of criticism. However, I have received so many letters from my constituents objecting to and protesting against the methods of advertising pursued by the Shipping Board, I feel it my duty to call your attention to same. In this bill, as I understand it, about $900,000 will be spent in advertising. I am the last of my colleagues to object to legitimate advertising, for I appreciate the value of advertising; but I have before me a copy of the World's Work, January, 1922, containing a page advertisement paid for by the Shipping Board, which reads in part as follows:

"You are tired of the old winter vacation round. You want something new—

I will not read the rest of it, but will simply state it tells you to go to South America.

I also have before me a copy of the National Geographic Magazine, January, 1922, which has three full-page advertisements by the Shipping Board in one issue, one of which reads:

You are tired of the old winter vacation round. You want something new—

Then there is this one—

China is the place to go this year. This is the year to see China.

In the Saturday Evening Post, January 14, 1922, there is a full-page advertisement, costing, I understand, $6,000, to this effect:

Now is the time to see South America. Now, as never before, South America, the playground of nations, invites you. These splendid new ships are operated for the United States Government by the Munson Steamship Lines. Write for booklet. United States Shipping Board, information desk 2471, Washington, D. C.

Mr. STEVENSON. Mr. Chairman, will the gentleman yield?

Mr. SEARS. Yes.

Mr. STEVENSON. Is there anything about going to Florida in that advertisement?

Mr. SEARS. Not a word. [Laughter.] But you need not worry about this, for you can not stop the people from going to Florida, as they know about our beautiful scenery and wonderful climate. I am glad my colleague from South Carolina asked that question. I have before me The Miamian, published by the citizens of Miami, Fla., which is costing them thousands of dollars, urging American citizens to go to Florida and spend the winter. I hope he has received this magazine, and while I know he is a very busy man, that he has found time to read it, and if he has, I believe he will agree with me when I say it is not necessary to go to South America or any other foreign country, and also that we have enough places of beauty and interest to go to in this country.

Mr. ANDERSON. And spend their money. [Laughter.]

Mr. SEARS. Yes. Why not there better than in some foreign country?

Mr. KNUTSON. Mr. Chairman, a point of order.

The CHAIRMAN. The gentleman will state it.

Mr. KNUTSON. Is the gentleman going to——

Mr. WINGO. Mr. Chairman, I make the point of order that a Member of the House can not be taken off the floor in that way.

Mr. KNUTSON. I am seeking information——

Mr. WINGO. You will continue to seek it. A Member can not be taken off the floor in that way.

The CHAIRMAN. The gentleman from Florida will proceed.

Mr. SEARS. I would like to call the attention of my colleagues to the fact that this year we are going to appropriate a million and a half dollars in beautifying our magnificent national parks, and why should not our citizens visit these first? Besides Florida, there is the State of California. I have never visited that beautiful State, but some day I hope to go out there and enjoy their climate. There is also the State of North Carolina, also the States of South Carolina, Georgia, and Texas, which are spending hundreds of thousands of dollars in advertising in magazines and newspapers urging the American people to stay at home and see America first, and also urging the people of foreign countries to come to this great country and enjoy our climate.

Mr. Chairman, I do not believe it is fair for the Government to spend the taxpayers' money urging the American people to go to foreign countries when there is so much in America to see. If they were spending their own individual money, then there could be no complaint, but the Government should quit spending the people's money trying to offset the cry that was raised here some years ago of "see America first," and also in so far as possible nullify the advertisements of our own people. Referring to my own district, I will say I realize I have one of the most progressive districts in the world, and——

Mr. KNUTSON. What district does the gentleman represent?

Mr. SEARS. The district reaching from Jacksonville to Key West.

Mr. KNUTSON. Is that the best part of Florida?

Mr. SEARS. The gentleman is unkind in trying to embarrass me. I am speaking for Florida, and if he has listened, for resorts also in other States. I represent a district where a brother of the gentleman from Illinois [Mr. MANN] resides, and he is a fine man, active and progressive. The gentleman who has charge of this bill also owns property in my district. It might interest you, Mr. Chairman, to know that there is not a colleague of mine who does not have a former constituent or relative now living in my district.

Mr. STAFFORD. There is great activity also in liquid goods down there, is there not?

Mr. SEARS. Yes. We have the Gulf on one side and the Ocean on the other. But if the gentleman is referring to that beverage which made Milwaukee famous, I will state Bimini, an English island, is only about 30 miles from Miami, and I am told you can get water or any drink you desire down there. [Laughter.] I also desire to say to my colleague from Wisconsin, I am not alarmed because of the number of northern people moving into my district, for almost all good Republicans when they move there become good Democrats. But I earnestly protest against the Shipping Board advertising to the American people that there is nothing in America to see and that they must go abroad in order to see something worth while. If they are going to continue this policy, then I frankly confess the cities and States who do advertise to such a large extent had just as well stop advertising, for they can not compete with the Government and such advertisement as they may send out. In other words, Mr. Chairman, it is simply a matter of the Government spending the people's money advertising "You are tired of America—go abroad"; while the people of the United States, or at least, the citizens of many States are advertising "There is enough to see in the United States; why spend your money abroad"? I earnestly and emphatically protest against this, and believe my colleagues will agree with me when I say it is neither fair nor just.

The CHAIRMAN. The time of the gentleman from Florida has expired.

Mr. SEARS. Mr. Chairman, may I have one minute more?

The CHAIRMAN. The gentleman from Florida asks unanimous consent to proceed for one minute more. Is there objection?

There was no objection.

Mr. SEARS. It seems to me, Mr. Chairman, when we made the railroad rates almost prohibitory for the man of ordinary means that was enough, and that even then the Government had gone too far. But now to come along and advertise page after page—three pages in one magazine and a solid page in the Saturday Evening Post—urging people to believe that there is nothing in the United States to see, and insisting that you must go abroad, is a wanton waste of the people's money, and some limitation should be placed around the expenditure of that $900,000.

Mr. Chairman, permit me to again state Florida can take care of herself, and in proof of this I only have to state when I first entered Congress there were less than 200,000 people in my district, while to-day there are more than 400,000—this does not include the thousands of tourists who are simply spending the winter there—and we are still growing by leaps and bounds. Our climate is unexcelled; our health condition ranks with the best of any State in the Union; our people are whole-souled and happy; our State has only begun to grow, and to those of you who have not had the pleasure of paying us a visit I trust some day you may do so in order that you may not only verify what I have said but can say I did not half paint the picture.

I shall not take up your time telling you about West Palm Beach, Palm Beach, Fort Lauderdale, Daytona, New Smyrna, Sanford, St. Augustine, Jacksonville the gateway to our State, and the many other wonderful and excellent winter and summer resorts in my district, nor shall I go into details of Tampa, Lakeland, St. Petersburg, Gainesville, the home of our university, Pensacola, and the many other places in the districts of my colleagues from Florida. Suffice it when I tell you we have spent millions of dollars for perfect roads and millions of dollars draining the Everglades, the land of which is only equaled by the lands along the banks of the Nile. And yet we have, as previously stated, just begun. All we ask is a fair deal, and again I say there is enough to see in Florida without going abroad. What say California, North Carolina, Texas, and if this same policy is pursued during the summer months New York, New Jersey—the State that boasts of Atlantic City—Maine and other States throughout the Union? [Applause.]

The Clerk read as follows:

For examination of presidential postmasters, including travel, printing, stationery, contingent expenses, additional examiners and investigators, and other necessary expenses of examinations, $75,000: *Provided*, That no person shall be employed hereunder at a rate of compensation exceeding $1,800 per annum, except five at not to exceed $3,500 each.

Mr. STEVENSON. Mr. Chairman, I make the point of order against that paragraph, that it is a provision for an expenditure that is not authorized by any statutory law.

The CHAIRMAN. Does the gentleman desire to be heard on the point of order?

Mr. STEVENSON. Mr. Chairman, if there is any law that authorizes examinations for postmasters, except the Executive order of the President, I have not been able to find it, and I find that the order of the President itself says that it is merely a presidential regulation, which shows that there is no statutory provision for it. Therefore, if I understand the rule of this House that no appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress—if that rule is in force, and there is no statutory provision for the examination of presidential postmasters, and it depends entirely and solely upon an Executive order, then I think I have brought my case within the rule.

Mr. WOOD of Indiana. I will state to the Chair, as a matter of history, that the present Executive order is a continuation of the Executive order inaugurated by President Wilson. The President of the United States, amongst other things, is authorized to issue Executive orders. Of course, I take it an Executive order can not be authorized unless it is predicated upon a law authorizing it.

Mr. WILLIAMS. Will the gentleman from Indiana yield?

Mr. WOOD of Indiana. I yield to the gentleman from Illinois.

Mr. WILLIAMS. Does not the law specifically prescribe how postmasters of the first, second, and third class shall be appointed?

Mr. WOOD of Indiana. The law provides how the examinations for fourth-class postmasters shall be held.

Mr. WILLIAMS. They are under the civil service.

Mr. WOOD of Indiana. Yes.

Mr. WILLIAMS. But the law provides that postmasters of the first, second, and third class shall be appointed by the President of the United States and their appointment confirmed by the Senate. Now, this Executive order merely provides the ma-

chinery to enable the President to make proper appointments. It is not based on any law.

Mr. WOOD of Indiana. It is based on a law. If it was not, the Executive order would not be authorized at all. Section 2852, prescribing the duties of the Civil Service Commission, provides amongst other things that it shall be the duty of said commissioners first to aid the President as he may request in preparing suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in any department to which such rules shall relate to aid in all proper ways in carrying such rules and all modifications thereof into effect. So, as a matter of fact, the Civil Service Commission is appointed as an auxiliary or aid to the President, subject to his Executive order, and there can not be any question about that.

Mr. WINGO. Will the gentleman yield?

Mr. WOOD of Indiana. I yield to the gentleman from Arkansas.

Mr. WINGO. The act to which the gentleman refers is an act with reference to the classified service?

Mr. WOOD of Indiana. Yes.

Mr. WINGO. Authorizing the President to cover any particular employees of the Government into the civil service. But the gentleman does not contend, and I understand the President does not contend, that the President's Executive order puts these postmasters under the civil service. It is true the law does provide that the Civil Service Commission shall assist the President in certain things, but that is with reference to the classified service. When the President makes an order covering certain employees into the civil service, then the Civil Service Commission are to do certain things, but it is not contended by anyone that these first, second, and third class postmasters are under the civil service.

Mr. ANDREWS of Nebraska. Will the gentleman from Indiana yield for a question?

Mr. WOOD of Indiana. I yield to the gentleman from Nebraska.

Mr. ANDREWS of Nebraska. Does not the fact that the law vests the appointment of these postmasters in the President carry with it by implication the authority of the President to choose his own methods of appointment?

Mr. WOOD of Indiana. I think the gentleman's position is tenable. I also think that under the law establishing the Civil Service Commission they are appointed as an aid to the President of the United States in inquiring into the classification of Civil Service officers in the first place, and in the second place to aid the President as he may request in preparing suitable rules, and so forth, and as stated it is one of the duties incumbent upon the President of the United States to appoint these postmasters. Now, he may issue an Executive order to any agency appointed for the purpose of assisting the President in carrying out the laws of the United States, to aid him in inquiring into the qualifications and fitness of appointees, or to aid him in anything pertaining to ascertaining the fitness of appointees to these positions. Therefore I say that he has the right, not only by reason of the fact that he is charged under the law with the appointing of these postmasters but it is the duty of the Civil Service Commission to aid him in carrying out that law. It is a purely administrative function.

Mr. STEVENSON. Mr. Chairman, the statement of the distinguished gentleman from Indiana [Mr. WOOD] that this idea originated with President Wilson does not constitute it law. While I admit that President Wilson had a lot of good sense, he never had the constitutional power to enact a law under which an appropriation could be made in this House.

Mr. WOOD of Indiana. He did it on many occasions.

Mr. STEVENSON. He did it because you fellows laid down and did not make a point of order.

Now, Mr. Chairman, the rule is exceedingly clear. There must be an authorization and that authorization must be made by law. There is no provision that an authorization may be made by Executive order.

In construing the rule the Chairman will find the following language:

> As all bills making or authorizing appropriations require consideration in Committee of the Whole, it follows that the enforcement of the rule must ordinarily occur during consideration in Committee of the Whole.

Now, when did it become pertinent for the President to make an Executive order which was considered in Committee of the Whole? In other words, the law authorizing the appropriation must be a law which has been passed upon by the representatives of the people in Committee of the Whole and determining the rights of the people as in Committee of the Whole and reported to the House.

Mr. FESS. Will the gentleman yield?

Mr. STEVENSON. I will.

Mr. FESS. Does not the gentleman's argument go to the lack of authority for the Executive order?

Mr. STEVENSON. No, sir. The President may prescribe any method he sees fit to secure the proper appointees for him to name for the Senate. He can make any regulations, but when he calls on the House of Representatives to make an appropriation to defray the expense he is reaching beyond his jurisdiction.

Mr. FESS. Does the gentleman concede that the President has authority under the law to make an Executive order?

Mr. STEVENSON. The President has authority under the law to say: "I am the constituted appointing power of presidential postmasters, and I as the appointing power hereby say that I will only appoint under the following circumstances: I will require an examination and have selections made from the three highest contestants." But when he goes further and says, "I hereby decree that the House of Representatives shall appropriate $75,000 to defray the expenses of this examination," he is invading the province of this House, and he can not get away with it.

The authority says:

> As all bills authorizing or making appropriations—

There must be some bill authorizing the appropriations in order to make it in order—

> requiring consideration in Committee of the Whole, it follows that the enforcement of the rule must follow during the Committee of the Whole.

Then they go on and state:

> The authorization by existing law required in the rule to justify appropriations may be made also by a treaty if it has been ratified by both the contracting parties. And a resolution of the House has been held sufficient authorization for an appropriation for the salary of an employee of the House even though the resolution may have been agreed to only by a preceding House. The omission to appropriate during a series of years for an object authorized by law does not repeal the law, and consequently an appropriation when proposed is not subject to the point of order.

But that has not gone to the point of saying that the dictum of a President shall be the law of the land.

A resolution of the House is held sufficient authorization for an appropriation of a salary to an employee of the House, even though the resolution may have been agreed to by a preceding House.

Now, Mr. Chairman, there is the rule of the House, and the construction that has always been placed upon it heretofore has been that the authorization must be a bill which has been passed upon by a Committee of the Whole representing the whole people and reported by the committee and passed and become a law; that a treaty which under the Constitution has the power of law when it has been ratified by both parties is the supreme law of the land, and a treaty will authorize an appropriation because it has the force of law, like the treaty to pay the United States of Colombia $25,000,000. That was the law of the land ratified by both parties and is authorization for an appropriation. But an Executive order—I do not care what the prerogative of the President is—an Executive order which declares that there must be an examination and which calls upon this House to appropriate for that examination is not a sufficient authorization for an appropriation, to come within the rules which are laid down for the government of this House, but is an executive usurpation by an executive officer to spend the money of the House and is not authorized by law.

The CHAIRMAN. The Chair is ready to rule. The question arises on the paragraph making appropriation for the purpose of examination by the Civil Service Commission of presidential appointees for post offices. It is admitted that this examination is required under existing order by the President. The question is whether or not it is authorized by existing law. What the gentleman from South Carolina [Mr. STEVENSON] says is of course entirely true. There must be some provision of existing law that authorizes the appropriation or else it is not authorized by existing law.

The provision referred to by the gentleman from Indiana as existing law is in this book known as Barnes's Federal Code, page 621, and is a part of section 2859:

> It shall be the duty of said commissioners: First, to aid the President, as he may request, in preparing suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modification thereof, into effect.

It is suggested by the gentleman from Arkansas [Mr. WINGO] there may possibly be an inference, at least, that these provisions might refer to merely the classified service. However, the broad scope of the power is shown by the provision in the

same chapter with reference to the limitation on the activities of Congressmen:

No recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or Member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making an examination or appointment under this act.

That evidences, of course, a very broad interpretation of the act, as it applies to any person who shall apply for any "office or place." That would necessarily include applicants for post offices.

As the power is granted without reservation to the President to make such appointments, and as he is authorized to prescribe rules and regulations for the Civil Service Commission, it would appear that the authority is complete in law for the appropriation of funds from the Treasury for such purpose. The giving of additional duties to an appointee of the President by an Executive order of the President, it seems, would clearly imply that such service must be paid for. As the President has the power to make orders to increase the efficiency and to regulate even the duties and prescribe rules for the conduct of the Civil Service Commission, if he has given an Executive order to the Civil Service for the performance of duties with regard to his office, an appropriation for such service is clearly within the provisions of the law. The Civil Service Commission is not limited only to duties with regard to the classified service. The President can create new duties and ask them to perform any duties under existing law that he chooses to do, and he has chosen to do that in this case.

Therefore it seems to the Chair that the appropriation is authorized by existing law, and the point of order is overruled.

Mr. ROACH. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. ROACH: Page 7, line 10, strike out all of lines 10, 11, 12, 13, 14, and 15, inclusive.

Mr. GREEN of Iowa. Mr. Chairman, the gentleman from Missouri [Mr. ROACH] has made some very astonishing and, I am certain, some very erroneous statements. He seems to have made them on the authority of the gentleman from Arkansas [Mr. WINGO], but he far exceeded anything the gentleman from Arkansas stated. That gentleman saw fit to put his interpretation upon certain actions of the department, and then the gentleman from Missouri states his further interpretation as actual facts.

Mr. WINGO. I will state to my friend that I have no desire to suffer the proverbial fate of the innocent bystander, but if the gentleman wishes, and will put them in the RECORD, I can furnish two bushel baskets full of letters that will sustain the charge—letters that I have received since I made the charge before.

Mr. GREEN of Iowa. There will be about a two-bushel basket full of complaints from disappointed candidates.

Mr. ROACH. The gentleman misunderstood what I said, that the reports emanate from the Civil Service Commission and the Post Office Department themselves, that the Members of Congress can get anything they want in the matter of post-office appointments, and I believe it is true. I have heard those reports, and have been told that, as a matter of fact, they are true.

Mr. GREEN of Iowa. The gentleman from Missouri is undertaking to make charges that he can not substantiate in any manner whatever. I think I know something about what is going on, and I never heard of such statements emanating from the departments. On the contrary, I know that the statement of the gentleman from Missouri is incorrect, and I know it from statements that my own colleagues have made to me, as I know it from personal experience. I do not know it from my having tried to influence the commission in any improper way, but I know it from my experience and from colleagues, gentlemen who have stated repeatedly to me that the examinations were conducted fairly, and that often the men that they wanted were excluded, but that they could do nothing about it. I have been compelled to write my constituents the same thing, that I could do nothing about it, when, as often occurred, Democrats were marked highest, or the particular party I wanted failed to get a passing grade.

Mr. ROACH. I did not say the reports were true. I said the reports were emanating from the department, and I have heard them and you have heard them. I have not said the reports were true. I have only heard about them.

Mr. GREEN of Iowa. I have not heard any such reports.

Mr. FESS. I would like to state to the gentleman and also to the Membership of the House that owing to a young man's service overseas I was exceedingly anxious to see him appointed postmaster in one of the towns in my district, and I made that known. The examination was conducted with the full knowledge that he had served overseas. But, unfortunately, he could not qualify under the term "necessary experience." He had not had experience. I asked whether the President's Executive order would give him preference because of overseas service and allow his overseas service to count on his experience, and I received yesterday an official answer that it would not.

Mr. WILLIAMS. Such a regulation ought to be abolished.

Mr. FESS. These charges that a Congressman can get anything he wants I do not think ought to be made seriously. If it is a matter of humor, all right; but it is certainly not true.

Mr. BLANTON. Will the gentleman from Iowa yield?

Mr. GREEN of Iowa. I would like to have some of this time myself. I think I can explain some of the ratings of the candidates. I happened to be at the Civil Service Commission's office one day, and while I was sitting there two clerks were reading back and forth and checking up their reports that they had received. I do not know where the candidate lived, nor for what position he was seeking, but evidently some post office.

I listened to some of the questions and answers. Letters had been written to citizens of his town making inquiry with reference to his fitness for the position, and one answer was that he had no fitness whatever; that he had no tact. Another party answered that he was not a public-spirited individual, and that he had refused to buy Liberty bonds, and was very unpopular in the town. Still another said he had no business capacity. There were other answers of that kind, all confidential information, that had been furnished the Civil Service Commission, information that his Congressman could not have acquired, although it would have been well if he could have done so.

Mr. STEVENSON. Does the gentleman think it is a good system that enables a crowd of fellows to paste a man in the back, where he can not see it?

The CHAIRMAN. The time of the gentleman has expired.

Mr. GREEN of Iowa. I ask unanimous consent for five minutes more, Mr. Chairman.

The CHAIRMAN. Is there objection. [After a pause.] The Chair hears none.

Mr. GREEN of Iowa. Just to show how far the gentleman's question goes, I would advise him that these men from whom the commission received the information were selected by the candidate himself, and their names had been given to the commission as references. Like some other politicians, they had overrated their popularity.

Mr. SEARS. My colleague from Ohio [Mr. FESS] was talking about soldiers. In the first congressional district one passed an examination and was the only one eligible, but they would not appoint him. He passed, I understand, a second time, but because there were not three they would not give him an appointment. In another place in my district both candidates failed, and the lowest one received the appointment.

Mr. GREEN of Iowa. I do not yield for the purpose of a speech. The gentleman can get his own time. The gentleman complains because the Civil Service Commission followed the rules when no candidate passes. The selection is then made without regard to the examination.

I do not believe that there is any foundation for the insinuation made with reference to the commission. The man who can influence them to violate the rules has much more influence with them than I have, or any other Member who has given me his experience.

Mr. ROSE. Mr. Chairman, will the gentleman from Iowa give me time to present a case that came under my own personal observation and which is in support of the statements made by the gentleman from Iowa [Mr. GREEN]?

Mr. GREEN of Iowa. Yes.

Mr. ROSE. I know of a young man who was in France for a long period of time during the late war and who presented himself for examination for postmaster under civil service, but who failed to qualify. He reported his failure to me. I was under the impression that his preference was not allowed him, and I made it my business to ascertain from the department whether or not the 5 per cent to which he was entitled was given to him, and learned that it was allowed. The young man was of opinion that he would be entitled to another examination, and I undertook to find out whether that would be permitted or not. He told me himself that he was unable to pass

the examination with respect to business qualifications, and that a reexamination would not help him in any way, and I made no further effort in his behalf, but commended him for his frankness.

Now, the point I want to make is that, so far as I can see, the examinations are fairly conducted, and that the reports made by the commission are proper, and that there is no foundation upon which to make the statements that have been made upon this floor in public criticism of the work and reports of the commission.

I do not see how the Civil Service Commission could do the things with which it is charged without our knowing about them, and, in my opinion, the work of the commission is properly conducted and fairly conducted under the rules that now obtain. Whether the system employed is proper is another question entirely.

Mr. GREEN of Iowa. I know of many cases showing just contrary to the conditions stated by the gentleman from Missouri [Mr. ROACH], where a Congressman wanted some particular person for a special reason, and there was no way to get him appointed, so far as I can learn. The Civil Service Commission has not been prostituting itself at the behest of Congressmen, but has been enforcing the law to the best of its ability and belief.

Mr. SEARS. I was not criticizing the Civil Service Commission at all. I was referring to the appointment of postmasters. The Civil Service Commission was perfectly fair, so far as I know.

Mr. GREEN of Iowa. The Civil Service Commission is undertaking to carry out the law and the system in good faith and to the best of its ability. If the system is bad, change it; but do not criticize the Civil Service Commission because some of the candidates' records will not stand up under the replies received by the Civil Service Commission from the very persons they have picked out in their own communities to pass upon their qualifications and recommend them to the commission.

Mr. WOOD of Indiana. Mr. Chairman, I wish to call the attention of gentlemen to the fact that I have agreed with gentlemen here that we should rise at 4 o'clock.

Mr. WINGO. I would like to have five minutes before you do.

Mr. WOOD of Indiana. Mr. Chairman, I move that the committee do now rise.

Mr. WINGO. I hope the gentleman will withhold that motion until I have had five minutes in view of some of the statements that have been made.

Mr. WOOD of Indiana. I make that motion, Mr. Chairman.

The motion was agreed to.

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. TOWNER, Chairman of the Committe of the Whole House on the state of the Union, reported that that committee, having under consideration the bill (H. R. 9981) making appropriations for the Executive and for sundry independent bureaus, boards, commissions, and offices for the fiscal year ending June 30, 1923, and for other purposes, had come to no resolution thereon.

EXTENSION OF REMARKS.

Mr. SEARS. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

The SPEAKER. The gentleman from Florida asks unanimous consent to revise his remarks in the RECORD.

Mr. SEARS. To revise and extend my remarks made this afternoon on the Shipping Board.

The SPEAKER. Is there objection to the gentleman's request?

There was no objection.

Mr. ANDREWS of Nebraska. Mr. Speaker, I make the same request.

The SPEAKER. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

ANTILYNCHING BILL.

Mr. UPSHAW. Mr. Speaker, I ask unanimous consent to address the House.

Mr. WALSH. What about?

Mr. UPSHAW. On the Dyer antilynching bill, inasmuch as I shall be necessarily absent on a sacred mission when the discussion on that bill is resumed.

The SPEAKER. Is there objection to the gentleman's request?

There was no objection.

Mr. UPSHAW. Mr. Chairman and gentlemen of the House, with a passion of patriotic purpose and humanitarian anxiety which I can not put into words I remind the proponents of this misnamed antilynching bill of that ringing declaration of the great English commoner when the "storming of the Bastile" was announced in Parliament: "How much is this the greatest day that freedom has ever known?" and paraphrasing that immortal exclamation I shall feel like exclaiming when the administration leaders "put through" this outrageous measure: How much is this the greatest tragedy against the American Negro and the Federal Constitution which this Republic has ever known! The bill is righteous in name but outrageous in its provisions. But for the blandishment of its name and—I measure my words when I say it—but for political fear, a fear that can not be well defined, but which has voiced itself in subdued tones in cloakrooms and corridors since this bill has been pending, I frankly believe that this unspeakable travesty on constitutional law and elemental justice would not get 100 votes on the Republican side. Of course it should not be made political, but it is both political and sectional in its purpose, and its actual application.

WORSE THAN THE "FORCE BILL."

It is worse than the notorious "force bill" of a generation ago, which so disgusted the fair-minded, conservative people of the North that it was strangled aborning by a groundswell of public indignation. That bill dealt with ballots and election privileges, while this Dyer bill not only strikes at the very foundations of our State governments, making of them an empty shell and a hollow mockery, but it carries provisions and imposes conditions which encourage the criminal and forget the victim of his atrocious crime. And these very conditions—as brought out by the gentleman from Maine [Mr. HERSEY] in that immortal speech which braved party displeasure and eloquently plead for justice and sectional fellowship—will inevitably increase race prejudice and make harder the conditions of the Negro in the section where he is most at home and where he is capable of his highest happiness and prosperity.

OPPOSED TO A "DOUBLE LYNCHING."

Hear me, my colleagues, I am more opposed to lynching than the proponents of this bill. I oppose lynching a human being, and I also oppose lynching the Constitution of the United States. Every Congressman from the South is naturally far more interested in stopping this awful crime than you men of other sections can possibly be, for you hear about it chiefly from a distance, but we sit up with it and suffer with it "every day and Sunday, too."

Lynching is a horrible crime. It is barbarous in spirit and merciless in execution. Declaring itself a protest against the impotence of law, it engenders a reckless and insidious spirit that ultimately tramples all law and endangers the security of society.

Because of these facts—facts too patent to admit of discussion—it is the duty of every patriotic citizen to stand aggressively against every phase and form of mob violence. Personally I have tried to live up to the spirit of my own teaching. Twenty-five years of platform utterance and 15 years of editorial expression will reveal my uncringing attitude against the perpetrators of mob violence as lawless murderers and enemies of community peace and safety. I have pursued this course, allow me to say, in the face of hostile threats and frequent criticism, for there is no State or section that has not its lawless element.

But, Mr. Chairman and gentlemen, I rejoice to declare that for the most part the rank and file of the people have stood with the leaders of thought and action in my own section for the majesty of the law. Editors have denounced lynching, the pulpit has cried out against it, officers have bravely fought it, while publicists and patriots everywhere have honestly tried to build up that wholesome respect for all law that will make lynching impossible.

In face of these outstanding facts and in face of the constitutional provision that police powers are reserved to the States, I must express my great surprise and my keen disappointment that this bill, which proposes to stop lawlessness, invades the sanctity of constitutional law and actually offers the preposterous proposition to penalize thousands of innocent people because of the crimes of the guilty few. Never before in the history of Federal legal procedure have I heard of such a lawless application of law. This bill, whatever the good intentions of its proponents, reads like a "carpetbag" bill.

INNOCENT SUFFER FOR THE GUILTY.

Not only the county in which the mob crime is committed is held guilty before this sweeping Federal statute but—worse than all—the innocent people of the innocent counties through which a mob may elect to carry a criminal to the scene of his crime for execution—yea, though the journey be made in the dark hours of the night while the law-abiding inhabitants are peacefully sleeping—those counties, too, are adjudged guilty in

the eyes of the Nation and of the world. Why, gentlemen, it would be just as sensible and just as just to penalize every innocent citizen in America because this crime is committed on American soil.

TRAMPLES PERSONAL JUSTICE AND CONSTITUTIONAL LAW.

Not only does this proposition trample every principle of elemental justice to the individual citizen, levying a penalty on thousands for a crime of which they are not only innocent but which they absolutely deprecate, but this law clearly tramples the Constitution of the United States, in that it would deprive the penalized counties of the due process of law guaranteed by the Federal Constitution. It would penalize the county without the requirement of any proof of misconduct or neglect on the part of the county officials charged with the duty of the administration of the laws, and would afford no redress whatever for any county, even though its own citizens did not in any sense participate in the lynching. Thus, without allowing the indicted county its day in court, its money would be taken and its people unjustly, outrageously indicted. This constitutes the equity and ethics involved; but I remind you that while a State can make such a law concerning a county, because the county is a part of itself in governmental action, without a change in our Federal Constitution the National Government has no authority to coerce a county.

THERE IS NO ANALOGY.

If it be answered as it was in the preliminary debate, that the Federal Government now invades the State to enforce the prohibition law, I remind you that the National Government did not extend its strong arm into the State or county for the enforcement of this law until after the liquor traffic was outlawed by the Federal Constitution through due governmental process.

The debate thus far has revealed already several honest admissions, even from its friends, that this proposed law against lynching may not stand the constitutional test.

Liquor was a commodity, a devilish sort of commodity, which, as an article of commerce became a national evil, and that national evil required a national remedy. But lynching is not a "commodity"; it is a local crime which can only be cured by a wholesome, individual conscience and a cumulative expression of that conscience.

A FRUITLESS REMEDY.

The sole excuse for urging such a law is an effort to deter from lynching. At present there is a law on the statute books of every State in the Union defining the crime of murder, and every man who participates in a lynching does so well knowing that he is committing murder and subjecting himself to the extreme penalty of the law. If this fear does not prevent lynching, would the knowledge that his county would be mulcted for damages restrain a man who would be willing to expose himself to the extreme penalty of the law? Certainly the fear of infinitesimal taxation will not deter a murder-mad man when the fear of the gallows fails.

WHAT SHALL BE DONE?

Every anxious patriot, every defender of the law, every friend of humanity is asking, "What shall be done to curb this mighty evil?" I have the answer: Stop the crime that produces it. [Applause.] And for God's sake stop the maudlin sentiment that weeps for the lyncher's victim and forgets the poor victim of the rapist and murderer lying yonder in an untimely grave, or living, bleeding, dying amid lacerated hearts in a home shadowed with a sorrow worse than death. Let the honest friends of this unwise measure send wise evangels of purity and purpose among the classes that furnish the criminal victims of the lawless lyncher's wrath and tell them to stop their hellish crimes or they will be promptly sent to hell. We of the suffering South will gladly join every humanitarian friend of law and order from Omaha, from Chicago, from East St. Louis, from Springfield, Ohio, and, God knows, right here in the Nation's Capital, and help them to plant in human hearts, both white and black, the foundation principles of that regenerating Christian truth—yes, and that wholesome fear—that will make them respect the laws of God and man. Do this instead of encouraging that fatal folly of the New York and Boston "Equal Rights Leagues," that are preaching a doctrine as impossible in Boston as it is in Atlanta, and as unthinkable in New York and St. Louis as it is in Anglo-Saxon America everywhere. [Applause.]

A PITIFUL PICTURE.

It is as blindly pitiful as it is dangerous and outrageous that never—not one single time—have I read in a Negro paper or heard from a white sentimentalist in advocating this so-called antilynching bill one earnest plea to stop the crime that started lynching, and which outraged communities everywhere seldom know how to forgive. Flaming headlines and incendiary stories have dealt with the details of the lynchers' crime, but no shocking details of the outraged white girl who was the darling of a happy home; no details of the crime that caused the young farmer to come home at noon or at nightfall to find the violated body of his young wife cold in her own lifeblood or piteously pleading to die; no details, if you please, of how a splendid young man on the border line of my district, who had married a beautiful girl of a noble family, had his head split open, while sitting at the supper table, by a trusted Negro farm hand who held that suffering, helpless, little woman for two hours in his hellish arms. In vain did Gov. W. Y. Atkinson plead with the infuriated mob to "let the law take its course." Maddened, as no man on the floor of this House can understand, they told the governor they would "fix him, too, if he did not get out of their way"—even as the mob recently did the mayor of Omaha—and they took that black fiend who had made himself a beast and sent him to perdition without ceremony or delay.

Do not say that such a swift visitation of mob violence is only meted out to a black beast. I saw the tree on which a white beast was hung for killing a whole family and burning the house down on their dead bodies. These true incidents are recited in shame and sorrow, but likewise in fidelity, in order that you honest men of other sections, who would love to know the truth and do the right thing, may understand something of the provocation we often face in the section where lynching is so often the frantic resort of outraged communities.

OPINION OF GEORGIA'S SECRETARY OF STATE.

A clear and powerful discussion of this angle of the question is herewith presented from Hon. S. G. McLendon, Georgia's brilliant secretary of state. Elected to his present position without leaving his rolling chair in the Kimball House, Atlanta, where I also reside, this remarkable man with his ripeness of general scholarship and his wealth of legal acumen, speaks "at the top of his voice" with a cogency that should command national attention.

I am frank to say that with all my admiration for his learning and his patriotism, I can not go with him quite all the way in his every conclusion, but it will be a wholesome and illuminating experience for honest men and women of other sections to carefully study this patriotic philosopher's reply to my telegram asking for an expression on this vital subject:

ATLANTA, GA., *December 20, 1921.*

Hon. W. D. UPSHAW,
House of Representatives, Washington, D. C.:

Answering your telegraphic inquiry, the law of self-defense and the right of self-defense is inherent in man as an individual and in the State as representing its collective individuality. The United States, through Congress, has the right of self-defense, and whenever in the opinion of Congress public safety requires it exercises the right, but only in case of war can it exercise this right to the fullest extent—that is, to the subordinating of all rights to the right of self-defense. Freedom of speech, of the press, of worship, and of assembly are not guaranteed by the Constitution of the United States except as against congressional abridgement, and only when the United States is at war, Congress, being given the war power and the right to pass all laws necessary and proper to the carrying into effect of war power, can and does deny rights protected and guaranteed only as against congressional invasion. In the late war Congress exercised to the limit the right of self-defense abiding in the Nation. The suspension of the writ of habeas corpus is an act of self-defense on the part of the State. The individual has the right of self-defense. Organized society has the right of self-defense, and unorganized society exercises the right of self-defense whenever that ancient and universal principle, the people's safety, is violated. Whenever and wherever on this earth crime is committed so atrocious as to place the perpetrator beyond the pale of humanity this universal principle, as supreme law, instantly asserts itself. The forfeiture of all right as a human being voluntarily made by the perpetrator or crime does not take away from society its right of self-defense, nor can it effectually deny to those immediately concerned to do swiftly that which others far removed from the scene think should be done slowly. No one defends lynching as a practice, but a lynching on accasion is easily comparable to an execution ordered by a court-martial in time of war. The slow-acting machinery of the courts in the ordinary administration of justice is inadequate to the exigencies of the situation. In both cases lynchings are due to provocation. They are a violation of the State law, and Congress has absolutely no power under the Constitution to make any act a crime because of its moral turpitude. The Constitution does not give Congress any police power or criminal jurisdiction except where the commission of the act complained of prevented Congress from carrying into effect a law constitutionally passed, necessary and proper to the exercise of a delegated power.

That Georgia has a lynching record can not be denied, but over and above this record stands out the fact that Georgia furnishes the best home on earth for the Negro. No Negro who owned his home was ever lynched in Georgia.

In 1880 the Negro paid taxes on less than $6,000,000 worth of property in Georgia. In 1920 he paid taxes on over $68,000,000 worth of property. There are more institutions for the higher education of the Negro in Georgia than in any similar area of the earth, and Atlanta, Ga., is the educational center of the Negro race. The largest bank in the world owned and controlled by the Negroes is found in Atlanta; capital stock half a million dollars. The ablest and most patriotic Negro bishop in America is Bishop J. S. Flipper, of Atlanta, my lifelong friend. The two largest barber shops in Atlanta are owned by a Negro, B. F. Herndon. Every barber he has in his employ is a Negro

and every customer he has is a white man, and his barber shops are patronized without prejudice. The largest Negro life insurance company in the world is in Atlanta, having assets of more than $1,000,000 and 159,806 policyholders. Georgia does not need the aid of Congress, composed of uninformed and misinformed Members, in order to fulfill her obligations to the balance of the Nation and to mankind.

S. G. McLENDON,
Secretary of State.

THE NEGRO'S NATURAL HOME.

Let me urge you, my honest colleagues, to ponder well those striking concluding declarations from Georgia's wise secretary of state. With the Negro thus happy and prosperous in his natural home in the southland, to which he was long ago exiled by slave traders and slave owners of the North for purely commercial reasons, how much better it would be for his solicitous friends, his real friends, to encourage him to discourage crime among his criminal class instead of harboring the criminal and producing more crime.

Note especially the shining fact that no Negro who owned his home has ever been lynched in Georgia, clearly because he has never committed the crime that so often causes lynching. If the time and the energy, the prejudice and the folly which have been spent in behalf of this vicious and futile measure were only dedicated to the sensible task of encouraging Negroes to buy homes and make dependable members of society, there would be no reason for this discussion.

DANGER SIGNALS HERE AND HEREAFTER.

A glaring illustration of this dangerous folly, this positively devilish leadership, can be found in an editorial in the June, 1921, number of the Crisis, a Negro monthly magazine published in New York, which has furnished a good deal of the argument for the proponents of this bill. You will read it with mingled pity and righteous indignation. Listen:

Seldom has efficient organization been demonstrated more effectively than by the Michigan branches of the National Association for Advancement of Colored People in defeating a bill introduced in the State Legislature of Michigan prohibiting intermarriage between white and colored people. On April 11 the national office received a letter from Harold A. Lett, president of the Lansing branch, stating that such a bill had been introduced on the 7th. The Lansing branch had immediately sent copies to each branch in the State and appealed to political and fraternal organizations to unite in exerting all pressure possible upon their respective representatives and senators to defeat the bill.

The national office at once communicated with all the Michigan branches, urging them to unite in sending a delegation to Lansing to appear at a public hearing on the bill. Publicity was secured through the Michigan newspapers and a number of the branches were urged to hold mass meetings to arouse public sentiment against the measure. The arguments on which opposition to the bill was based were, first, anti-intermarriage laws are a denial of equal protection to colored women, placing the colored girl at the mercy of any white libertine. Second, anti-intermarriage laws would be a public declaration that Negro blood is a physical taint, a theory which no self-respecting colored person can accept. It was also pointed out that the passage of such a law by a legislative body composed wholly of white members implied a fear that laws are needed to prevent white women from marrying colored men. A splendid spirit of cooperation and of activity was shown by all the branches in opposing the bill.

On April 13 the national office received a telegram stating that the bill was killed in the committee on the night of the 12th. (Page 66 of June issue of the Crisis.)

Look and listen again. Here is another danger signal, found on page 60 in the same June issue of the Crisis:

Olmstead's famous journey through the seaboard slave States has been repeated not only in fact but in spirit by a young Englishman, Stephen Graham, who came to America last year to see for himself the workings of the race problem. He visited Virginia, Tennessee, Georgia, Alabama, Florida, Louisiana, and Mississippi. In Georgia he tramped the actual road from "Atlanta to the sea," to be able to contrast the modern conditions of ex-slaves with those of 60 years ago.

First impressions are lasting, because usually they are true. Very often, indeed, the vividness, even the effect of those impressions, may be explained away. But the thing which must needs be explained is still there. Talk as you will—expound, interpret, defend—the fact still remains that America does not accord the rights of life, liberty, and justice to her black citizenry.

We quote two or three passages:

"I felt sorry for the white women of the South; there will some day be a terrible reckoning against them. Their honor and safety are being made the pretext for terrible brutality and cruelty. Revenge, when it gains its opportunity, will therefore wreak itself upon the white woman most. Because in the name of the white woman they justify burning Negroes at the stake to-day, white women may be burned by black mobs by and by. There is no doubt that almost any insurrection of Negroes could ultimately be put down by force, and that it would be very bad for the Negroes and for their cause, but before it could be put down what might happen? And should it synchronize with revolutionary disturbances among the whites themselves, or with a foreign war, what then?

"If America does not cast out the devil of class hate from the midst of her, she will again be ravished by the angel of death as in the Civil War. The established, peaceful routine of a country like America is very deceptive. All seems so permanent, so unshakable. The new refinement, the new politeness and well-lined culture, and the vast commercial organization and the press suggest that no calamity could overtake them. The forces that make for disruption and anarchy is generated silently and secretly. It accumulates, accumulates, and one day it must discharge itself."

To the white American this Englishman's conclusion will come as a shock, but to the colored American his words are often an echo.

By a curious coincidence we read in the current issue of Unity:

"People of African descent in this country are either going to be placed on a plane of absolute equality with other peoples or else there is going to be trouble which will make even the Civil War seem insignificant."

This, gentlemen, this, my well-meaning colleagues, is the type of propaganda going on in the camp of foolish Negro agitators, and eventuating at last in the sentimental hysteria and the campaign promise which brought this bill before Congress. The harm which its enactment into law would bring to both races would write a new chapter among the tragedies of human history. When I commented in private conversation on that provision that would take $10,000 from a county absolutely innocent and give it to the family of the criminal, with never a dollar to the family suffering from the first horrible crime, a brilliant Atlanta club woman, who is prominent in church work, declared:

Why, Congressman, such an outrageous law would actually bring on revolution.

RUINED BY "CARPETBAG" RULE.

It only makes stronger the present case of the southern white man in his attitude toward the Negro when some thoughtless man who is in favor of this bill "points with pride" to the loyalty of the Negro slave to his white master before the Civil War, and especially to the safety of the southern white woman in the guardianship of the Negro slave. Certainly. That is at once the strength and the glory of our contention. We stand with uncovered head before the matchless tribute of Henry Grady to the righteous loyalty of the Negro slave to the inviolate purity of his master's home. But that was before the horrors of reconstruction came. That was before Federal statutes, backed by Federal bayonets, placed "the ignorant ballot in the black hand that still trembled from the shackle of the slave"; that was before "carpetbag" politicians tried by unspeakably brutal methods to make the ignorant Negro slave the political ruler of his intelligent white master; that was before Thaddeus Stevens & Co. in fury and blindness dealt a blow to the Negro from which he has never morally nor politically recovered. For the white man said in effect: "If you are fool enough to turn against the best friends you have on earth, you can just go to the devil." And, alas, many of them have been going there ever since.

Not all, thank God. Not the most, thank God. For the rank and file of the best Negroes and the rank and file of the best white people are living side by side in peace and friendship, and that peace would be permanent and that friendship undisturbed if outside agitators would let us alone.

I hold in my hand a cartoon from a Negro paper—look at it—sent me by a Negro physician, who asks me to support this bill, showing the common basis of the misguided black man's appeal. A Negro is here pictured carrying his age-long burdens—"Jim Crow car," "segregation," "lynching," and so forth—showing that he is restive and defiant concerning his failure to get "social equality."

No man can deny the justice of equal accommodation for equal pay, but you know and I know and everybody knows that the social mingling of white and black in trains, in street cars, and in hotels, to say nothing of more intimate social relationships, is an inevitable breeder of trouble, and every consideration of common sense, of community peace, and happiness demands the segregation of which the agitators complain. Sensible southern Negroes do not want social commingling and foolish northern Negroes shall not have it where Anglo-Saxon manhood is at the helm.

THE SOUTH IS FIGHTING UPWARD.

We are fighting upward in the loyal South, wrestling with problems a hundredfold more difficult than you honest men of other sections can possibly understand. Let us alone—save only to give us that comradely hand of sensible sympathy and understanding fellowship which is due a noble and chivalric people of proven loyalty and consecrated purpose. What shall be done? Create the sentiment that will cause every State to pass such a law as Alabama has, a law impeaching the sheriff and other county officials that do not do their duty. Pass also a State law that requires mounted machine guns in every jail and automatically dismissing the sheriff that does not use them on the crowd bent on murdering a man without law. Do this—do anything that will protect the prisoner and preserve the majesty of the law, but do not wipe out our State laws and our county courts and rape the Federal Constitution in this frenzied effort to correct a giant evil.

And in the name of all that is sane and practical, do not put the $10,000 forfeit in the hands of the criminal's family, who are often themselves a hotbed of criminals. They and their companions in crime would live yet more in idleness and crime.

and some of the worst ones would be tempted to bring on another "lynching bee" in order that another pampering bounty might come from the county treasury.

And if you are determined to outrage the white virtue of the Federal Constitution and penalize the innocent for the sins of the guilty and encourage more crime by causing the rapist and the murderer to feel that "Uncle Sam" is, somehow, taking his part, then go a step further and give another beautiful $10,000 to the family of the victim of the barbarous fiend. To give sympathy to the family of the human devil who is lynched and give neither sympathy nor money to the family of the first and greater sorrow would brand every man who votes for this strangely horrible discrimination as guilty of barbarous sympathies and legal and moral blindness.

MR. FISH AND SENATOR WATSON.

Gentlemen of the House, you will remember that when the debate closed the other day the gentleman from New York [Mr. FISH] had just finished an impassioned invective against the record of Georgia and against the activities of the junior Senator from Georgia in causing a certain investigation to be held about military cruelties. He said that the Georgia Senator ought to be spending more time in trying to stop lynching than he was in trying to bring about reforms in our Army life.

Mr. Speaker, I hold no brief for the Senator from Georgia. He has proven amply able to take care of himself. But since Senator WATSON'S name was unnecessarily brought into this debate, it must be admitted that, although there are countless noble and knightly men in the Army before whose gentleness and greatness I stand with uncovered head, that Senate investigation has proven with an avalanche of evidence from all over America that there has been a great deal of harsh cruelty on the part of many officers which ought to be forever smashed by the American people. [Applause.]

And it would doubtless be interesting to the gentleman from New York, and perhaps other proponents of this bill, to know that the Senator from Georgia has twice risked his own life in his own community to stop the lynching of Negroes; and when other proponents of the bill have that much to their credit they can then, with greater propriety, indict the Senator from Georgia. He knows the Negro and is his practical friend. I know the Negro and am known as his practical friend. For many years I have visited the Negro churches and the Negro schools, and I have tried to inspire those people, young and old, along worthy lines of righteous and dependable living. And this kind of work, may I say, multiplied by friends from the North and friends of the South will do a thousandfold more good than impossible and incendiary efforts like this so-called antilynching bill.

A MONUMENTAL CONFESSION.

The gentleman from New York [Mr. FISH] confessed with monumental candor that the bill was intended especially to "protect the colored race," as he put it, and also was especially leveled at the South. I thank him for his refreshing candor. This means, then, that this bill is both racial and sectional; it means that its discussion now and its operation, if enacted into law, must have but one effect, as the gentleman from Maine [Mr. HERSEY] so strikingly said, "the revival and keeping alive of race prejudice and sectional feeling." In the name of our common heritage and our common destiny as Americans it is time to stop this evil thing. It positively grieves me, as I think of that brilliant portrayal of the increasing commercial and social desolation of the Negroes who have gone North, as brought out by my friend, Mr. COCKRAN, to remember that paid agitators and reformers are spending their time and prostituting their leadership to a propaganda that will not help but will ultimately hurt the Negro.

Indeed, it is hurting him now. These galleries, crowded with Negroes to-day, tell the story of a tragic racial and national pathos. They honestly think that this proposed law will help them. They have been misled by the flaming headlines and incendiary articles in certain Negro publications. And I tell you frankly that those publications are much like the discussions by the proponents of this bill—all sympathy spoken for the fiend whose hellish crime brings on his swift and terrible fate—but never a line, never a word of sympathy for the victim or the family of the victim of rape or murder, or both.

Men, you are riding to your ruin. You are riding your supposed "beneficiaries" to their ruin. Civilization can neither be builded nor preserved by such a blind, one-sided sentimentality. We men of the South, who know the Negro as you men of the North can not know him, are anxious to help him, but our help is helpless and hopeless as long as they shield criminals and do nothing to stop the crime.

Let them come back to the land where they have had an understanding welcome and such a free commercial hand, where their wealth has grown by marvelous strides into more than $2,000,000,000 in farm lands alone, and let them take the advice of their great pioneer, Booker Washington, when he uttered, in my own city of Atlanta, the immortal sentence that gave him international fame. Hear him again:

> My colored friend, remember it is worth far more to you to be permitted to make an honest dollar working side by side with the white man than to be allowed to spend that dollar sitting by him in a theater.

It will be a good, wholesome thing also if they will remember that great truth uttered by Dr. H. H. Tucker when he was editor of the Christian Index, "What God has put asunder let not man join together." And I say with my last word that the thing that has been appealing to me on this side, where I treasure my Republican friends, is the fact that many of them have said to me in the cloakrooms and elsewhere, "We wish to God this bill had not been brought before us. If we vote for it we stultify our conscience and outrage our judgment, and if we vote against it we lose every Negro vote in our community." Gentlemen, such loss would be a badge of honor.

Let me say to you in frankness and in an honest desire for fellowship in the solution of this great question that Anglo-Saxon manhood of the North should shake hands with the Anglo-Saxon manhood of the South and the East and the West, remembering that only in intelligent Anglo-Saxon supremacy, dominated by a restraining and transforming Christian spirit, can be found a sure guaranty for the safety and happiness of this weaker race, the perpetuity of our American institutions, and the inspiration and uplift of all mankind. [Applause.]

ADJOURNMENT.

Mr. WOOD of Indiana. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 4 o'clock and 10 minutes p. m.) the House adjourned until Monday, January 23, 1922, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

486. A letter from the Comptroller General of the General Accounting Office, transmitting report of balance of $233,196.73, which was found due the United States in the settlement of the accounts of Oberlin M. Carter, former captain in the Corps of Engineers, United States Army; to the Committee on Expenditures in the War Department.

487. A letter from the Secretary of War, transmitting, with a letter from the Chief of Engineers, report on preliminary examination and survey of Wrangell Harbor, Alaska (H. Doc. No. 161); to the Committee on Rivers and Harbors and ordered to be printed with illustrations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. JEFFERS of Alabama: Committee on the Public Lands. S. 2124. An act to relinquish, release, remise, and quitclaim all right, title, and interest of the United States of America in and to all the lands contained within sections 17 and 20, township 3 south, range 1 west, St. Stephens meridian, Ala.; without amendment (Rept. No. 585). Referred to the Committee of the Whole House on the state of the Union.

Mr. DENISON: Committee on Interstate and Foreign Commerce. H. R. 9051. A bill to amend section 6 of an act entitled "An act extending certain privileges of canal employees to other officials on the Canal Zone, and authorizing the President to makes rules and regulations affecting health, sanitation, quarantine, taxes, public roads, self-propelled vehicles, and police powers on the Canal Zone, and for other purposes, including process as to certain fees, money orders, and interest deposits," approved August 21, 1916; with amendments (Rept. No. 586). Referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII,

Mr. McCORMICK: Committee on the Public Lands. H. R. 5762. A bill providing for a municipal park for the city of Butte, Mont.; with amendments (Rept. No. 584). Referred to the Committee of the Whole House.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, the Committee on Invalid Pensions was discharged from the consideration of the bill (H. R. 9821) granting a pension to Mary Thomas, and the same was referred to the Committee on Pensions.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials were introduced and severally referred as follows:

By Mr. McCORMICK: A bill (H. R. 10052) providing for the purchase of a site and the erection of a public building at Anaconda, Mont.; to the Committee on Public Buildings and Grounds.

By Mr. HARDY of Colorado: A bill (H. R. 10053) to amend section 73 of an act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, as amended by an act approved June 12, 1916; to the Committee on the Judiciary.

By Mr. FREAR: A bill (H. R. 10054) to amend an act entitled "An act to reduce and equalize taxation, to provide revenue, and for other purposes," approved November 23, 1921; to the Committee on Ways and Means.

Also, a bill (H. R. 10055) to amend Title II of the revenue act of 1921; to the Committee on Ways and Means.

By Mr. McSWAIN: A bill (H. R. 10056) to further amend the Federal reserve act; to the Committee on Banking and Currency.

By Mr. TEMPLE: A bill (H. R. 10057) to provide for the completion of the topographical survey of the United States; to the Committee on Interstate and Foreign Commerce.

By Mr. ANDERSON: A bill (H. R. 10058) to amend the Federal farm loan act by establishing a farm credits department in each Federal land bank; to the Committee on Banking and Currency.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. BROWNE of Wisconsin: A bill (H. R. 10059) granting a pension to Elizabeth Darling; to the Committee on Invalid Pensions.

By Mr. COPLEY: A bill (H. R. 10060) granting a pension to Julia Allen; to the Committee on Pensions.

Also, a bill (H. R. 10061) granting a pension to Charles E. Kidder; to the Committee on Pensions.

Also, a bill (H. R. 10062) granting a pension to Emma F. McClaughry; to the Committee on Pensions.

By Mr. GOULD: A bill (H. R. 10063) granting an increase of pension to William D. Semans; to the Committee on Invalid Pensions.

By Mr. KING: A bill (H. R. 10064) granting a pension to Jeremiah Hays; to the Committee on Invalid Pensions.

By Mr. KIRKPATRICK: A bill (H. R. 10065) granting a pension to Carrie B. Billman; to the Committee on Invalid Pensions.

By Mr. LEE of New York: A bill (H. R. 10066) authorizing the reinstatement of Stewart Blackman as first lieutenant in the Regular Army; to the Committee on Military Affairs.

Also, a bill (H. R. 10067) for the relief of James M. Fitzsimmons; to the Committee on Claims.

By Mr. NORTON: A bill (H. R. 10068) for the relief of Della Deanovic; to the Committee on Claims.

By Mr. SHELTON: A bill (H. R. 10069) granting an increase of pension to Lucretia Davy; to the Committee on Invalid Pensions.

By Mr. TILSON: A bill (H. R. 10070) granting a pension to Nellie A. Storrs; to the Committee on Invalid Pensions.

By Mr. IRELAND: Resolution (H. Res. 270) authorizing the Doorkeeper of the House to appoint an assistant to the superintendent of the House press gallery; to the Committee on Accounts.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

3595. By the SPEAKER: Petition of John J. Blaine, governor of Wisconsin, urging, on behalf of the State-wide conference of citizens, the carrying out of plan to improve the St. Lawrence River; to the Committee on Interstate and Foreign Commerce.

3596. Also, petition of the Baltimore Quarterly Meeting of Friends (orthodox) approving recent appropriation for relief of the suffering people in Russia; to the Committee on Foreign Affairs.

3596½. By Mr. CAREW: Petition of Eugene H. Porter, commissioner, department of farms and markets, New York, urging the passage of the Voigt bill, H. R. 8086; to the Committee on Agriculture.

3597. By Mr. CHINDBLOM: Petition of Emil A. Fick and 69 other citizens of Lake Zurich, Ill., urging immediate collection of foreign debt, etc.; to the Committee on Foreign Affairs.

3598. By Mr. CULLEN: Petition of the Aero Club of America, urging support of the Wadsworth bill, S. 2815; to the Committee on Interstate and Foreign Commerce.

3599. By Mr. GALLIVAN: Resolutions adopted by the Boston Allied Printing Trades Council, during its meeting held January 3, urging Congress to favor American valuation upon all imports; to the Committee on Ways and Means.

3600. By Mr. KISSEL: Petition of U. S. Grant Post, No. 327, Department of New York, Grand Army of the Republic, and of Wilkenfeld Bros., all of Brooklyn, N. Y., urging the observance of the centenary of the birth of Gen. U. S. Grant, April 27, 1922; to the Committee on the Library.

3601. By Mr. LUCE: Petition of the Massachusetts Federation of Churches, indorsing the bill to exclude fraudulent devices and lottery paraphernalia, H. R. 6308; to the Committee on the Post Office and Post Roads.

3602. Also, petition of the Massachusetts Federation of Churches, indorsing the Sterling bill, for the regulation of immigration; to the Committee on Immigration and Naturalization.

3603. Also, petition of the Massachusetts Federation of Churches, indorsing the Jones-Miller bill, to prohibit the importation of opium for other than medicinal purposes; to the Committee on Ways and Means.

3604. Also, petition of the Massachusetts Federation of Churches, indorsing the Bland bill, for the regulation of immoral motion pictures in interstate commerce; to the Committee on Interstate and Foreign Commerce.

3605. Also, petition of the Massachusetts Federation of Churches, indorsing the Dyer antilynching bill; to the Committee on the Judiciary.

3606. Also, petition of the Massachusetts Federation of Churches, urging that the payment of the Austrian debt be deferred; to the Committee on Ways and Means.

3607. By Mr. MEAD: Petition of Elizabeth T. Force, Oteen, N. C., urging the passage of House bill 9291, relative to the Public Health Service; to the Committee on Interstate and Foreign Commerce.

3608. Also, petition of Dr. Eugene H. Porter, commissioner of foods and markets, department of farms and markets, New York State, urging the passage of the Voigt bill (H. R. 8086) prohibiting interstate traffic in imitation or bogus canned milks; to the Committee on Agriculture.

3609. By Mr. PATTERSON of New Jersey: Petition of the Study Circle of West Collingswood, N. J., favoring relief of the Armenians and people of the Near East; to the Committee on Foreign Affairs.

3610. By Mr. ROGERS: Petition of the Massachusetts Federation of Churches, urging immediate and positive action in cooperation with the other great powers, if possible, to save the Armenian people from extinction; to the Committee on Foreign Affairs.

3611. By Mr. SINCLAIR: Petition of citizens of Shields, N. Dak., urging the revival of the United States Grain Corporation; to the Committee on Agriculture.

3612. Also, petition of citizens of Wildrose, Lunds Valley, Van Hook, Parshall, and Coulee, N. Dak., urging the revival of the United States Grain Corporation and legislation for stabilization of prices of farm products; to the Committee on Agriculture.

3613. Also, petition of 250 citizens of Regent, Wildrose, Williston, Cogswell, Brampton, Straubville, Ryder, and Rhame, N. Dak., and Newark, S. Dak., urging the revival of the United States Grain Corporation; to the Committee on Agriculture.

3614. Also, petition of farmers and business men assembled in a public gathering at Aneta, N. Dak., urging the revival of the United States Grain Corporation; to the Committee on Agriculture.

3615. By Mr. VARE: Memorial of the Pennsylvania Forest Commission, protesting against the transfer of Federal jurisdiction over national forests from the Agriculture to the Interior Departments; to the Committee on Agriculture.